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Kerala Gazette No. 46 dated 22nd November 1983.
PART I



GOVERNMENT OF KERALA

Abstract

RULES FOR KERALA STATE AWARDS FOR MALAYALAM FILMS—AMENDMENT TO RULE—ISSUED.

GENERAL ADMINISTRATION (PUBLIC RELATIONS—E) DEPARTMENT

G. O. (P) No. 6/83/PR. Dated, Trivandrum, 6th September, 1983.

Read:—1. Letter No. 96/80/R&R/KSFDC dated 9-6-1983 from the Chairman, Kerala State Film Development Corporation.

2. Minutes of the Sixteenth Conference of the State Ministers of Information held in New Delhi on 3-7-1982.

ORDER

Rule VI(1) of the Rules for the Kerala State Awards for Malayalam Film will be substituted by the following:—

VI(1) Government shall be entitled to have two prints of the film which receives an award. One of these prints will be retained by the Public Relations Department. The other print will be forwarded to the National Film Archieves of India. The cost of these prints viz cost of raw materials and processing charges will be reimbursed to the producers by the Public Relations Department and the NFAI if brand new prints are made available within three months from the date of announcement of the awards. If the brand new prints are not supplied within three months of the announcement of awards, then no reimbursement will be made and the print entered for the award will be retained by the Government without any compensation to the producer.

The rules for State Awards for Malayalam Film stand modified to the above extent.

By order of the Governor,
T. K. RAJASEKHARAN,
Joint Secretary to Government.

G. 1370 [P.T.O.]

To

The Chairman, Kerala State Film Development Corporation.
The Director of Public Relations.
The Private Secretary to Chief Minister.
The Confidential Assistant to Commissioner & Secretary (Fin.).
The Examiner, Local Fund Auditor.
The Secretary, Malayala Chalachitra Parishad,
The Secretary, Film Chamber of Commerce, Cochin-11, Ernakulam.
The Director, National Film Archieves of India, Pune.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 1148/83/LBR. *Dated, Trivandrum, 7th October* 1983.

The award of the Labour Court, Quilon in respect of the dispute between the Manager, S N. V. Tile Works, Thamarakulam, Quilon and their workman Sri B Mohankumar, Sreerama Mandiram, Mundakal, Quilon received by Government on 30-9-1983 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Quilon

Present :

SMT. C. VISALAKSHI AMMA, B. A., B. L.
Presiding Officer

Monday, the 26th day of September, 1983/4th Asvina, 1905

In

INDUSTRIAL DISPUTE No. 97/78

Between

B. Mohankumar, Sreerama Mandiram, Mundakal, Quilon	Workman

And

The Manager, S. N. V. Tile Works, Thamarakulam, Quilon	Opposite Party

Representations:—

Shri David Koshy, Advocate, Quilon	For *the Management*
Shri K. Anantha Sivam, Advocate, Quilon	For *the Workman*

AWARD

The above Industrial dispute was referred to this court by the Government of Kerala, for adjudication, as per order G. O. (Rt.) No 1160/78/L & H dated 20-7-1978. The dispute referred for adjudication is "Denial of employment of Shri B. Mohanan, Junior Clerk".

2. The claimant Shri B. Mohanan filed a statement to the following effect:—

He was appointed as a Junior Clerk in the service of S. N. V. Tile Works, Thamarakulam, Quilon from 1-4-1975 in the scale of Rs. 65-250, as per the appointment letter dated 28-3-1975, and he continued in service till 1-9-1975. On 6-8-1975 a notice was issued to him by the opposite party, the Manager of the S. N. V. Tile Works stating that he has misbehaved. He submitted an explanation denying the allegation. By a letter dated 1-9-1975, the opposite party discharged him from service with effect from that date. His repeated requests to the Board of Directors of the opposite party to reinstate him in service did not succeed. Thereafter conciliation proceedings were initiated before the District Labour Officer, and in that conciliation proceedings, the manager of the opposite party had agreed to reinstate him; but later on he backed out of the undertaking. Thereafter a conciliation conference was held by the Deputy Labour Commissioner and there also the manager agreed to reinstate him provided the claimant submitted a letter of regret to the manager. Under the directions of the Deputy Labour Commissioner, he gave a letter of regret which was forwarded to the opposite party. But the undertaking was not still complied with. As no settlement could be arrived at the matter was referred to the government which was subsequently referred to this court for adjudication. The order of discharge passed by the opposite party is illegal and so is liable to be quashed. Though it is alleged that the claimant has misbehaved the opposite party did not conduct any enquiry regarding the alleged misconduct. No opportunity had been given to him to defend himself and establish his innocence. Thus the management has violated all the principles of the natural justice, law and equity. The Manager has failed to implement the orders of the Deputy Labour Commissioner to reinstate him and it was a calculated devise on the part of the manager to deny him employment. It was one K. C. Raman the diseased grandfather of the claimant who was the real founder of the factory. For some time the claimant's father Sri R. Balakrishnan was a shareholder, and also the General Supervisor of the factory. The share of Shri R. Balakrishnan has devolved upon the claimant is entitled to be reinstated in service. Since 1-9-1975 the claimant is unemployed and subjected to suffering and misery. He is therefore entitled to be reinstated with all backwages from 1-9-1975.

3. The opposite party filed a written statement contending as follows:—

The claim statement filed by the claimant is illegal, irregular and improper. The claimant Mohanan was appointed as a temporary Clerk on

28-3-1975 by the management for a period of three months. After the expiration of three months his service was terminated by efflux of time. He was again appointed on the basis of his application as a temporary clerk for three months period from 1-7-1975. While he was working as a temporary clerk he misbehaved and so was discharged from service on 3 9-1975 which was ratified by the Board on 29-10-1975. While in service the worker entered into the Manager's room and used obscene words without any cause. This act of the worker was brought to the notice of the management who discharged him from services. He was only a temporary clerk. As he was only a temporary worker, the management was not liable to conduct any enquiry against him in connection with his misconduct. There is no act of unfair labour practice or mala fide and illegal motives in the action taken by the management. He was given adequate opportunity to show cause why he should not be discharged on the grounds alleged therein. He in turn misused that right and opportunity. To the show cause notice he has submitted an explanation using a language which was again defamatory to the then manager of the factory. The allegations that the manager had given an assurance to reinstate him in service is false and incorrect. The claimant has got no right to get reinstatement on the ground that he is a shareholder of the S. N. V. Tile Factory. After he has been discharged from service he is doing agency business. Due to these reasons the opposite party is not liable to reinstate the worker with backwages. It is therefore prayed that the claim statement has naturally to be dismissed.

4. The claimant filed a rejoinder traversing the contentions in the written statement and reiterating his claims. In the rejoinder he would state as follows :—

One day, while in service he was taking his noon meal in the eastern room of the office of the Management, when, the manager who came there ejected him out forcibly using obsence language at him. Following that he was discharged from service. He would contend that the discharge order is illegal as no enquiry has been conducted regarding the allged misconduct. The allegation he has doing agency business is also denied. He would accordingly pray that an award may be passed reinstating him in service with backwages.

5. The point to be decided is :—

Whether the discharge of the claimant is illegal and whether he is entitled to be reinstated in service with backwages.

The workman's case is that he was employed in service as a Junior Clerk from 1-7-1975 and that he was discharged from service on the ground of misconduct from 1-9-1975. It is also his case that no domestic enquiry was conducted regarding the alleged misconduct levelled against him and hence the order of discharge passed is illegal and is liable to be quashed. On the other hand the case of the management is that he misbehaved towards the manager while in service and that as he was only a temporary employee, the manager was not bound to conduct a domestic enquiry.

Due to his misconduct he was discharged from service and the discharge was ratified by the management also. It is therefore evident that no enquiry had been conducted by the management regarding the alleged misconduct. As such the parties were given an opportunity to adduce evidence before this court. The management has examined MW1 and has filed Exhibits M1 to M6. WW1 to WW3 were examined and Ext W1 is marked on the side of the worker Ext. W1 is the original appointment order under which the delinquent was appointed in the services of the management on 1-4-1975. He was appointed as temporary clerk on Rs. 65 per mensum for three months in the scale of Rs. 65- 30. Exhibit M3 is the subsequent appointment order by which he was again appointed as a temporary Junior Clerk for 90 days from 1-7-1975. Ext. M2 is the report submitted by the delinquent to the fact that he was taking charge with effect from 1-7-1975. This appointment was made as per the resolution passed by the Director board of the opposite party. The contention of the management is that while in service he misbehaved towards the manager by using obscene words. A show cause notice was therefore issued to him to submit his explanation in the matter Ext M4 is the explanation submitted by him to the manager. A reading of the explanation would show that therein also he was using defamatory language towards the manager. Ext. M5 is another letter written by the delinquent to the Director Board of the opposite party explaining to them the attitude of the manager towards him. Therein also he was finding fault with the manager and had used the most impolite words against him. His allegation therein was that the manager was involved in certain activities which are deterimental to the management itself and that in order to hide those matters the manager was trying to victimise the delinquent. His case is that on several occassions the manager had manipulated accounts and misappropriated the factory funds and that the manager had a misconception that it was he who had leaked out that matter to the board of directors. He produced records to show that the board of directors had even taken a decision and had directed the manager to remit the amount misappropriated by him. Since the manager was under the impression that it was the delinquent who informed this matter to the board of Directors, the manager was taking a hostile attitude towards him. From Ext. M4 and M5 it can be seen that the delinquent was considering himself superior to the manager as he is having some shares in the opposite party Tile Works and this had made him dare to write such letters to the manager. The resolution passed by the Board of Directors would also go to show that the explanation submitted by the delinquent was one defamatory to the manager. Hence his explanation was not accepted and the Board of Directors decided to discharge him from service. In WW1 the delinquent would state that on a Particular day he happened to take his noon meals in the manager's room and that the manager who happened to see him there forcibly ejected him out of the room. WWs 2 and 3 were also examined to prove this fact. Both WWs 2 and 3 would swear that on the particular noon they had heard some altercation in the office room, between the manager and the delinquent Mohanakumar and that they also witnessed the manager forcibly ejecting out Mohanakumar

from the office room. The case of the manager is that the delinquent had entered the office room and then without any provocation used obscene words at him. This was the misconduct alleged against the delinquent. But the manager is silent about the allegation regarding forcible ejection now raised by the worker. As stated earlier there is no domestic enquiry held by the management and no evidence is adduced by the management before the court also to prove the event that took place in the office room. The only fact proved before this court is that there was some altrication between the manager and the delinquent at the office room and that there after the delinquent was forcibly ejected out of the room. Thus there is absolutely no evidence to prove the exact incident that took place inside the office room. Though the delinquent would state that the altrication took place following his taking the noon meal in the office room the evidence of the manager would show that there is a separate room on the southern side of the yard where the staff and workers could take their noon meals. However, it is in evidence that no domestic enquiry had been held to prove the exact incident which led to this altrication and forcible ejectment of the worker. Exts. M4 and M5 would disclose the fact that the incident occurred as the delinquent had taken his noon meals in the office room. The delinquent might have adapted such a course of taking his noon meals there because of his conception that he too is a shareholder of the opposite party Tile Works and that he also is a person having some voice in its administration. Perhaps that might be the reason which made him write explanations of such a nature which are defamatory to the manager. Of course, Ext. M1 the subsequent letter submitted by the delinquent to the Labour Officer would show that therein he is admitting his misbehaviour towards the manager. But this letter would not enlightened the real fact which led to this untoward incident. Without holding a domestic enquiry his services has been terminated and it is clear that the order of termination is based on misconduct by which a stigma is attached to the service. It is true that he was a temporary employee. But even the services of a temporary employee shall not be terminated as a punishment unless he has been given an opportunity to explain the charges of misconduct alleged against him. Here no domestic enquiry was held by the management. The evidence before this court is also not sufficient to prove that the delinquent had behaved in such a manner without any reasonable provocation. Even if he had misbehaved towards the management he had offered an unconditional apology also, to the manager. This also has not been considered by the management. It is a settled principle that "where a person is appointed to a temporary post for a term, his service condition the absence of a contract or a service rule permitting its premature termination he terminated before the expiry of, that period unless he has been guilty of some misconduct, negligence, inefficiency and other disqualifications and appropriate proceedings are taken under the rules". There is nothing in the appointment order to show that the management reserved the right to terminate the contract before the due date. He was appointed in the services of the company for 90 days with effect from 1-7-1975 to 30-9-1975.

But he was discharged from service with effect from 1-9-1975. At the time of his discharge from service only two months period had expired and he was entitled to continue for a period of 30 days more from 1-9-1975. It follows that his services were terminated illegally and so he was entitled to continue in the service of the management for the balance period of 30 days more. For the reasons stated above I am of opinion that the termination of the service of the workman is not justifiable.

6. Now the question is what relief can be given to the worker. He was appointed as a temporary clerk for a period of 90 days commencing from 1-7-1975 and ending with 30-9-1975. As found earlier he was entitled to continue in service for 30 days more ending with 30-9-1975. However in the meantime this disciplinary proceedings started and he was discharged from service from 1-10-1975. From the discharge order it can be seen that at the time of discharge he was paid his salary up to 30-9-1975. In the circumstances even if the order is set aside the worker cannot join duty as his term had already expired and as he had been paid his full wages for the contract period. But the fact that he would have been eligible for appointment for a fresh period, if continued in service cannot be ruled out and hence his discharge as a punishment would be a stigma on his career. Considering the above facts and circumstances, I find that no relief of reinstatement can be given to the workman save and except that the stigma on bis career arising from termination of his service would stand removed.

In tbe result an award is passed holding that the termination of his service before the due date as a punishment is not justifiable and that the stigma on his career arising from such termination of his service would stand removed. Parties will suffer their costs.

This award will come into force on the expiry of 30 days from the date of publication of the award in the official gazette.

C. Visalakshi Amma,
Presiding Officer.

Appendix

I. *Witness examined on the side of the Management:*
M W I—M. Sivasankaran

II. *Exhibits marked on the side of the Management:*
Ext. M1—True copy of the application from Shri. Mohanan, to the Management.
Ext. M2—Joining report dated 1-7-1975 of Shri Mohan.
Ext. M3—Letter dated 1-7-1975 from S.N.V. Tile Works, Quilon, to Sbri Mohanan.

Ext. M4—Letter dated 6-8-1975 from Shri Mohanan to the Manager, S.N.V. Tile Works.

Ext. M5—Letter dated 12-8-1975 from Shri Mohanan to the S.N.V. Tile Works.

Ext. M6—Letter dated 21-5-1978 from Shri Mohan, to the Manager, S.N.V. Tile works.

III. *Witness examined on the side of the Workman*:

WW1—Shri Mohanan

WW2—Shri Mukundan

WW3—Shri Surendran

IV. *Exhibits marked on the side of the Workman*:

Ext. W1—Letter dated 28-3-1975 from the manager, S.N.V. Tile Works to Shri Mohanan.

Kerala Gazette No. 46 dated 22nd November 1983
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1145/83/LBR. *Dated, Trivandrum, 7th October 1983.*

The award of the Labour Court, Quilon in respect of the dispute between the Managing Director, T. C. D. W. S. Ltd. No. 4, Trivandrum and their workman K. Thankayyan, Plavunattakuzhi Puthen Veedu, Near L.M.S. Church, Uchakada P.O., Venganoor, Trivandrum received by Government on 23-9-1983 is hercby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

In the Labour Court, Quilon

(Monday, the 19th day of September, 1983/28th Bhadra, 1905)

Present:

Smt C. VISALAKSHI AMMA, B.A. B.L.,
Presiding Officer
In

INDUSTRIAL DISPUTE No. 10/80

Between

K. Thankayyan, Plavunattakuzhi Puthen Veedu, Near L.M.S. Church, Uchakada P.O., Venganoor, Trivandrum .. *Workman*

And

Managing Director, T.C.D.W.S. Ltd. No. 4, Trivandrum .. *Management*

Representations:

M/s G. Krishnan Nair, A. M. Mathew, R. Somanathan, K. Jayakumar & K. Kesavan Nair, Advocates, Trivandrum .. For the *Management*

Shri R. Raghavan, Advocate, Trivandrum. .. For the *Worker*

GA. 144/J.

AWARD

This is an Industrial Dispute referred to this court for adjudication by the Government of Kerala, by order G. O. (Rt) No. 621/80/LBR dated 13-5-1980. The issue referred for adjudication is "Dismissal of Shri. K. Thankayyan".

2. The case of the workman as revealed from his claim statement is as follows;

He was appointed as a Branch Manager under the T. C. D. W. S. Ltd. No. 4, Puthen Chantha, Trivandrum on 10-11-1964 and he was drawing a salary of Rs. 285 per mensum. While he was serving under the society very promptly he was placed under suspension as per proceedings dated 9-1-1972 of the society alleging that he had mis-appropriated society's money amounting to Rs. 7, 117.90 jointly with the sales assistant. He was directed to show cause why he should not be dismissed from service for the reason that a Criminal prosecution was launched against him for misappropriation. He filed a reply denying the allegation and stating that he has not committed the crime. He also requested that if any shortage of amount has occurred due to his bona fide mistake in calculation he is ready to pay his share of the amount in instalments. But without considering his request he was dismissed from service by an order dated 22-3-1972 of the society. The criminal prosecution launched against him for the alleged misappropriation ended in his acquittal, as per the judgement delived by the special judge and enquiry commission on 15-11-1976 in C. C. 21/76. In the meanwhile the society had filed an arbitration case also as number 232/72 before the Registrar of Co-operative Societies for recovery of the alleged amount from the workman and the sales assistant. An order was passed in the arbitration case directing recovery of the amount from the Workman. An appeal was preferred against that award whereby the matter has been remanded, and the same is now pending before the arbitrator for fresh disposal. After his acquital in the criminal case he had requested the society to reinstate him in service with backwages. On 13-11-1978 he received a reply to the effect that under the existing conditions, it is not possible to reinstate any of the dismissed persons. His dismissal from service is illegal as no domestic enquiry was conducted before his dismissal. No charge-sheet was served on him and he was not given an opportunity to prove his innocence in accordance with the rules of natural justice. Some other persons dismissed from service after his dismissal, have been reinstated in service. His request alone has been rejected. He therefore prays that an award may be passed for his reinstatement with all backwages.

3. The management filed a written statement admitting that the workman was an employee of that society. Its contetions are the following :—

During the period ranging from 1-10-1971 to 31-12-1971 the workman was the Branch Manager of the Kaithamukku Branch of the society and one K Sekhara Pillai was the Sales Assistant there. The Branch Manager

and the Sales Assistant who are in charge of the branch are jointly and severally responsible for the working of that branch including sale proceeds, the stock etc. On verification of the stock and accounts for the said period it was found that the workman and the Sales Assistant of the said branch had created a liability to the extent of Rs. 7,117.90. They are jointly and severally liable for the said sum. This is borne out by the records of the society, and they have admitted and acknowledged of having created the liability. Thus they have fraudulently misappropriated the funds of the society and committed breach of trust. On being informed of this misconduct they both agreed to remit the amount of the liability, but in spite of the above assurance they have not satisfied the liability by payment. Hence a show cause notice was issued to the delinquents on 4-1-1972 to show cause why disciplinary action should not be taken against them. They were also directed to remit the amount on or before 5 p.m. on 6-1-1972. They did not respond to the show cause notice and hence they were placed under suspension from 9-1-1972. As they have admitted thier liability the disciplinary action committed, after considering the various aspects and the larger interest of the society found it not advisable to continue such hands in the service of the society and so proposed the punishment of dismissal from service. Again the delinquents were given an opportunity to show cause against imposing the proposed penalty. To the notice they submitted a reply stating that the Vanchiyoor Police have already registered a crime against them as case No. 372, that the matter is pending before the First Class Magistrate Court, Trichur and hence they are not in a position to give any explanation at this stage as it will prejudice their defence in the criminal case. As the pendency of a criminal case was not a sufficient ground for not proceeding with the disciplinary action against employees one more opportunity was given to them to file their submission if any. They again requested for postponment of the disciplinary action till the dismissal of the criminal case. The disciplinary action committee after considering the explanation on 16-3-1972 resolved to dismiss the two employees from the service of the society and accordingly they were dismissed. The dismissal is legal and proper and do not suffer from any of the infirmities. The misconduct is of a grave nature and as such no punishment less than the one imposed will meet the ends of justice. There was an arbitration reference with regard to this magger and an award was passed in favour of the society allowing realisation of the amount of Rs. 7,117.90 with interest. The acquittal of the employees in the criminal case is no ground for claiming reinstatement. The dismissal order was issued in March, 1972 and the workman who accepted the same was significantly silent for these seven years. It was after so much delay that the alleged dispute was first raised by him in 1978 and in view of this delay also, the workman is not entitled to any relief. As the liability was admitted by the workman no domestic enquiry is warranted. All reasonable opportunities have been given to the workman in the disciplinary proceedings against him and principles of natural justice also have been followed. Hence the workman is not entitled to the relief of being reinstated with backwages.

4. The workman filed a replication reiterating his claims and traversing all the contentions raised by the management. In his replication also he contended that the order of dismissal without a resolution for domestic enquiry was not proper and hence the order is illegal and could not be sustained. He would therefore contend that he is entitled for reinstatement with back wages.

5. The main points for consideration are :—

(i) Whether the dismissal of the workman from the Service of the society is valid and proper.

(ii) Whether the workman is entitled for reinstatement as prayed for.

Point No. 1:—After both sides have entered appearance and filed their pleadings in this court, the management submitted that no domestic enquiry had been conducted in the matter and so the management should be given an opportunity to adduce evidence in support of the action taken by it. Accordingly the case was posted for evidence of the worker as well as of the management. On the hearing date the worker was present and he was examined as WW1, and Exhibits W1 to W3 were marked on his side. He was cross-examined by the management and Exts. M1 to M8 were marked. According to the workman he was appointed in the service of the society on 10-11-1964 and he was drawing a monthly salary of Rs. 285. He was working as the Branch Manager of the Kaithamukku Branch from 1-10-1971 to 31-12-1971 and there he was assisted by a Sales Assistant Shri K. Sekhara Pillai. The branch was inspected by the officers of the society on 31-12-1971 when it was found that the stock there was deficit to the extent of Rs. 7,117.90. The case of the management is that the Branch Manager and the Sales Assistant together had misappropriated the amount and thus had committed breach of trust. Hence a show cause notice was issued to the delinquents Thankayyan and Sekhara Pillai on 1-1-1972, stating that they have committed an action of misconduct by misappropriating the society funds and that they should submit their explanation before 4 p.m. on 2-1-1972, failing which disciplinary proceedings will be taken against them Ext. M2 is the show cause memo issued to them. Exhibit M3 is another memo dated 4-1-1972 issued to them stating the value of the deficit stock found missing and demanding them to remit the amount on or before 5 p.m. on 6-1-1972. From Ext. M3 it can be seen that both workmen had filed their explanations to M2 notice on 2-1-1972 itself admitting their liability and stating that they would remit the entire amount to the society in equal shares. Subsequent notice M3 was issued to them as they failed to remit the amount as undertaken by them. In spite of this second notice they did not remit the amount nor did they give any explanation. They were therefore placed under suspension with effect from 9-1.1972. M5 is a notice issued to the workers directing them to submit their explanation in the matter, and Ext. M6 is the replay sent by the delinquent to the society wherein he prayed that the departmental enquiry may be postponed since a criminal case registered against them for the same matter is pending in the criminal court. But that replay did not find favour with the disciplinary committee of the society and so the

committee passed a resolution proposing to impose the punishment of dismissal. The matter was informed to them by Ext. M1 letter. The workman was acquitted in the criminal case by special judge and enquiry commission and therefore he filed M7 petition before the managing director of the society to reinstate him with permission to remit the amount in 20 equal monthly instalments. That petition was not allowed as evidenced by Ext. W3 letter of the society which stated that under the existing conditions it is not possible to reinstate any of the persons once dismissed from service. There after Ext. M8 petition was filed by the workman before the District Labour Officer, requesting for reinstatement. Ext. W2 is the award passed by the arbitrator in the matter, wherein it was found that this is a civil liability created by the workman and that therefore the society can realise the amount from the workman. At the same time this award would further show that there are prior instances., where the persons who had created such civil liability even to the extent of Rs. 17,000 had been reinstated in service. Relying on this award it is contended on behalf of the workman that such concession should be given to him also and that he should be reinstated in service with backwages. Ext. W3 is the copy of the judgement in the criminal case which would show that the delinquent was acquitted in the criminal case on the finding that criminal misappropriation has not been proved against him. At the same time it is found that there is evidence to show that he was entrusted with the goods of the society. Ext. W2 and W3 would convincingly prove that there was entrustment of society goods to these workmen and that on 31-12-1971 when the stock was verified there was some deficiency. This liability is admitted by the workman also.

6. It is now contended by the workman that this is only a civil liability and that as there are prior instances where persons who had created similar liability were reinstated in service he too is entitled to be reinstated. It is also argued on behalf of the workman that civil liability is not a ground for dismissal and that therefore the dismissal order itself is not proper and valid. Apart from all this, it is also contended that no domestic enquiry had been conducted by the management and as such the dismissal order is invalid and is liable to be set aside. As against this, the management's counsel contended that the workman has admitted his liability and hence there was no need to conduct a departmental enquiry. So also it was argued that a show cause notice was issued to the workman to submit his explanation as to why disciplinary action should not be taken against him, but that his replay was to the effect that the enquiry was to be postponed as a criminal proceeding is pending against him. It is true that a criminal proceeding and a departmental enquiry are independent of one another and it is not necessary that departmental proceedings should be postponed until. the disposal of the criminal case. However, it is admitted by the management, that no departmental enquiry had been conducted before his dismissal The argument now placed by the management counsel is that the workman has admitted his liability and so it is not incumbent upon the management to conduct a domestic enquiry or let in evidence about the allegations. But here what is admitted by the workman is only his civil liability to repay the amount. His evidence is that he was prepared to remit his portion of the

liability if there is any such deficiency as noted by the management. When examined as WW1 also, he would admit that there was that much deficit in the stock and that himself and the sales assistant would be jointly and severally liable for the amount. At the same time there is nothing in evidence to show that he was committed any criminal misappropriation or breach of trust. In Ext. W3 it is stated that the workman had filed a criminal complaint before the police alleging theft of some articles from the said branch but that the said criminal case was referred as the allegation was found to be false. Therein the allegation was that goods worth about Rs. 932 had been stolen away from the said branch. But here on verification, the shortage found in the stock was for an amount over Rs. 7,000. It is therefore clear that more goods than that alleged to have been stolen away, had been lost to the society. It is in that manner the civil liability has occurred for which both the workman would be responsible. As there is entrustment of society goods with the workmen they are liable to reimburse the loss substained by it. At the same time it is in evidence that both the branch manager as well as the sales assistant were each having in his position a key of the branch store. As such it can not deficiently be held that the delinquent workman was the sole person who is responsible for the loss. It is on this ground that criminal misappropriation alleged was, found against the management by the criminal court. It is admitted fact that the acquittal of a delinquent in a criminal case is not a ground to exonerate him from departmental proceedings or punishment. But at the same time it is an accepted principle of law that an opportunity should be given to him to explain as to how the shortage in stock occurred. Here the management had not conducted a departmental enquiry and as such he did not get any opportunity to prove as to how such shortage occurred. Without conducting an enquiry he had been dismissed from the society by a resolution passed by the disciplinary committee. However it is a settled law that "even if no enquiry has been held by the employer or if the enquiry held by him is found to be defective the Tribunal in order to satisfy to itself about the legality and validity of order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidenee for the first time justifying its action. The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal". It is in accordance with this principles that the management was given an opportunity by this court to adduce independent evidence to sustain its order of dismissal. But the management has failed to avail of that opportunity and has not produced any independent evidence before this court. It follows that the management has failed to prove in this court also the criminal misappropriation and breach of trust alleged against the worker. As such it is clear that the management has failed to follow the principles of natural justice in passing the dismissal order against the delinquent workman and that he was not given an opportunity to establish his defence in the case. So long as a domestic enquiry was not conducted it was not proper to pass an order of dismissal of the delinquent workman. I therefore find that the order of dismissal passed on the workman cannot be sustained and is liable to be set aside.

7. *Point No. 2.*—As the order of dismissal is not proper or valid, the delinquent workman is entitled to be reinstated in service. His only liability is to reimburse the loss suffered by the society due to his neglegent management.

8 The next point that is to be considered is with regard to the payment of backwages. It is alleged in his claim petition that his salary was the only source of his income and that as he was dismissed from service he is put to much suffering and hardship. But it was neither averred nor stated in the evidence that subsequent to his dismissal he remained unemployed. "Merely because an order of reinstatement is made the employee would not automatically be entitled to get backwages for the entire period. In order to entitle him to get backwages it is to be shown that he was unemployed or under employed and that he made sincere efforts to mitigate the loss or damages. It is then for the management to prove otherwise". Here there is no evidence adduced by the worker to show that either he was unemployed since his dismissal from the service of the society, or that he had made honest efforts to secure employment during the relevant period. As such, he is not entitled to get any backwages from the date of dismissal up-to-date of reinstatement.

In the result I pass an award setting aside the order of dismissal passed on Mr. K. Thankayyan and directing the opposite party management to reinstate him in service. But he will not be entitled to any backwages or other benefits.

This award shall came into force with effect from the expiry of thirty days from its publication in the Government Gazette.

C. Visalakshi Amma,
Presiding Officer.

Appendix

I. *Witness examined on the side of the management*: Nil

II. *Exhibits marked on the side of the management*:

Ext. M1 Copy of the Proceedings of the Secretary, Trivandrum Co-operative District Whole Sale Society Ltd. No. 4, Trivandrum dated 22-3-1972.

Ext. M2 Copy of the memo No. LA-1/71-72 dated 1-1-1972 issued by the Secretary of the Society.

Ext. M3 Memo No. L.A. 1/71-72 dated 4-1-1972.

Ext. M4 Proceedings No. E3/2468/71 dated 9-1-1972 of the Secretary T.C.D.W.S. Ltd. No. 14, Trivandrum.

Ext. M5 Copy of the Notice No. E3/2468/7 (L) dated 29-2-1972.

Ext. M6 Copy of the letter dated 10-3-1972 from Shri K. Thankayyan of the Secretary of the Society.

Ext. M7 Copy of the letter dated 17-10-1978 from Sri K. Thankayyan of the Managing Director of the Society.

Ext. M8 Copy of the letter dated 29-12-1978 from Sri K. Thankayyan to the District Labour Officer, Trivandrum.

III. *Witness examined on the side of the workman.*

WW1. Shri K. Thankayyan

IV. *Exhibits marked on the side of the workman.*

Ext. W1 Copy of the Judgement in Criminal case No. 21/76 (old C.C. 4/73 of Special Judge's Court, Trivandrum).

Ext. W2 Copy of the order in file No. 233/72 as per sub section 69 of Co-operative Act 1969.

Ext. W3 Letter No. L2/77-78 dated 28-11-1978 to Shri K. Thankayyan issued from the managing Director of the Society.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 1023/83/LBR. *Dated, Trivandrum, 12th September* 1983.

The award of the Labour Court Quilon in respect of the dispute between the Manager, Lahai Estate, Ranni, Perinad and workman of the above Estate represented by the Secretary for Kerala. The Estate Staff Union of South India, Muttambalam P.O., Kottayam-686004 received by Government on 2-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Quilon

Tuesday the 2nd day of August, 1983/11th Sravana 1905

Present :

SMT. C. VISALAKSHI AMMA, B.A., B.L.,
Presiding Officer

In

INDUSTRIAL DISPUTE No. 16/81

Between :

The Manager, Lahai Estate, Ranni, Perinad.

And

The Workman of the above Estate represented by the Secretary for Kerala, The Estate Staff Union of South India, Muttambalam P.O., Kottayam-686 004

Representations:—

M/s. Menon & Pai, Advocates, Ernakulam. } For *the Management*

Shri K. Bhanu, Secretary for Kerala, The Estate Staff Union of South India, Muttambalam P.O., Kottayam. } For *the Workman*

G A 126/S

AWARD

This Industrial Dispute between the above parties was referred to this court for adjudication by the Government of Kerala Under Section 10 (1) (c) of the Industrial Disputes Act 1947 (Central Act, XIV of 1947) as per order G.O. (Rt) No. 1004/81/LBR dated 11-8-1981.

2. The issue referred for adjudication is, "dismissal of Shri G. Isiah, Head Clerk of Lahai Estate".

3. Today, when the case was taken up for hearing, the management has filed a petition stating that the matter has been settled. A signed copy of the settlement is also incorporated with the petition.

In the result an award is passed in terms of the settlement which is given below as annexure and will form part of the award.

This award will come in to force on the expiry of thirty days from the date of its publication in the Government Gazette.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me on this the 2nd day of August, 1983.

C. VISALAKSHI AMMA,
Presiding Officer.

"Annexure"

MEMORANDUM OF SETTLEMENT

Parties Present:

Representing Employer — Mr. M. K. Nambiar, Representing Malayalam Plantations, (India) Ltd., P.B. No. 502, Cochin-3.

Representing Workmen — Mr. K. Bhanu, Secretary for Kerala, Estates Staffs' Union of South India Kottayam.

Mr. C. Isiah, Ex-Head Clerk, Lahai Estate.

Brief Recital of the Case

The dismissal of Mr. C. Islah, Ex-Head Clerk, Lahai Estate is pending before the Labour Court, Quilon in Industrial Dispute No. 16 of 1981.

The parties have come to a settlement the terms of which are given below:—

1. Mr. C. Isiah will be reinstated with continuity of service by not later than 31-3-1983, but without backwages.
2. He will not be entitled to any monetary benefit for the period of his non-employment.
3. He will be posted as a supernumerary head-clerk on Kundai Estate.
4. He will not be entitled to any travelling other expenses for reporting for duty.
5. This is in full and final settlement of the issues involved in I.D. No. 16 of 81 before the Labour Court, Quilon.
6. Both parties agree that the Memorandum of Settlement be filed before the Labouc Court will a prayer to pass an award in terms of the Settlement.

Dated at Cochin, this the 28th day of March, 1983.

Signature of Parties

(1) (Sd.)

(2) (Sd.)

(3) (Sd.)

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1173/83/LBR. *Dated, Trivandrum, 12th October 1983.*

The award of the Labour Court, Quilon in respect of the dispute between the General Manager, Skinnerpuram Estate, Elamannoor P. O. and their workmen represented by (1) The President, Kollam Jilla Plantation Workers Union, CITU, Adoor and (2) The Secretary, Kunnathoor Thottam Thozhilali Union, AITUC, Elamannoor P. O. received by Government on 20-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Quilon

Monday the 19th day of September, 1983/30th Bhadra, 1905

Present:

SMT. C. VISALAKSHI AMMA, B. A., B. L.,
Presiding Officer
In

INDUSTRIAL DISPUTE No. 28/81

Between

The General Manager, Skinnerpuram Estate, Elamannoor, P. O.

And

The workmen of the above Estate represented by:

1. The President, Kollam Jilla Plantation Workers Union, CITU, Adoor.
2. The Secretary, Kunnathoor Thottam Thozhilali Union, AITUC, Elamannoor P. O.

Representations:

Shri P. Narayanan, Advocate, Alleppey. .. For *the Management.*

Shri N. Raman Pillai, Advocate, Quilon. .. For *the 2nd Union.*

AWARD

The above Industrial Dispute was referred to this Court for adjudication Under Section 10 (1) (c) of the Industrial Disputes Act of 1947 as per order in G. O. (Rt.) No. 1336/81/LBR dated 21-12-1981. The issue referred are the following:—"Wages for the period from 2-9-1981 to 16-9-1981, Lockout of the estate with effect from 17-9-1981 and Dismissal of 22 workers namely S/Shri V. Asokan, K. Balan Nair, K. J. Baby, M. Jacob, Krishnan Kutty Nair, A. Mohammed Ali, C. N. Soman, S. Thankappan Nair, P. Thomas, Babu Simon, T. Surendran, Gopalakrishnan Nair, Abdul Majeed, Baby Daniel, Prabhakaran Pillai, M. T. Podiyan, K. A. Rajan, K. Surendran, Vikraman Pillai, Radhakrishnan (Tappers), R. Sivan Pillai and R. Gangadharan Pillai (Factory workers).

2. It is not necessary to set out the pleedings of the parties is the matter was settled out of court. On 14-12-1982 a joined petition signed by the management and one of the unions has been filed by the management stating that the matter has been setled out of court and that an award may be passed accordingly. The second union who has not signed the petition objected to the compromise petition. Accordingly the dispute has been posted for hearing and on that date the second union also filed a petition that the dispute has been settled between the parties and agreed that this dispute need not be continued further.

3. In view of the above I pass an award holding that there is no Industrial Dispute pending between the parties for adjudication by this court. No. costs.

This award shall come into force on the expiry of thirty days from the date of its publication in the Government Gazette.

G. Visalakshi Amma,
Presiding Officer.

Kerala Gazette No 46 dated 22nd November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1174/83/LBR. *Dated, Trivandrum, 12th October 1983.*

The award of the Labour Court, Quilon in respect of the dispute between Mr. T. K. Narayanan, Proprietor, Santhosh Motor Service, Santhosh Bhavan, Vakayar, Konni and his workmen represented by the General Secretary, Quilon District Private Motor Workers Congress (INTUC-I), Contonment, Quilon received by Government on 20-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Quilon

Monday the 19th day of September, 1983/30th Bhadra, 1905

Present:

SMT. C. VISALAKSHI AMMA, B.A., B.L.,

Presiding Officer.

In

INDUSTRIAL DISPUTE No. 20/82.

Between

Mr. T. K. Narayanan, Proprietor, Santhosh Motor Service, Santhosh Bhavan, Vakayar, Konni.

And

The General Secretary, Quilon Distri t Private Motor-Workers Congress (INTUC-I), Contonment, Quilon.

Representations:—

Shri J. Jacob,
Advocate, Quilon. — For *the Management*

AWARD

The above Industrial Dispute was referred to this Court for adjudication by the Government of Kerala as per order G. O. (Rt.) 1123/82/LBR dated 18-10-1982. The issue referred for adjudication is "Dismissal of Shri A. Salavudeen, Conductor and denial of employment to Shri G. S. Prabha, Checker and Shri Yeesuf, Driver".

2. On 29-8-1983 which date the case posted for evidence, the management filed a petition requesting to strike of the dispute from the file on the ground that the matter has been settled, Settlement itself signed by individual workers have also been produced. In spite of registered notice the union did not appear this court.

3. In view of the above I pass an award holding that there is no dispute between the parties for adjudication to this court.

This award shall come into force on the expiry of thirty days from the d te of its publication in the Government Gazette.

C. VISALAKSHI AMMA,
Presiding Officer.

Kerala Gazette No. 46 dated 22nd November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1147/83/LBR. *Dated, Trivandrum, 7th October 1983.*

The award of the Industrial Tribunal Alleppey in respect of the dispute between the Managing Partner, Kunnathu Textiles, Ayyanthole, Trichur–3 and the workmen of the above concern represented by Shri V. K. Thomas, Velookkaran House, East Fort, Trichur–5 received by Government on 19-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

In the Court of the Industrial Tribunal, Alleppey

(Dated this the 1st day of August, 1983)

Present:

Shri K. KANAKACHANDRAN,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 10/82

(Old No. I. D. 3/76 before the Industrial Tribunal, Calicut)

Between

The Managing Partner, Kunnathu Textiles, Ayyanthole, Trichur–3.

And

The workman of the above concern represented by Shri V. K. Thomas, Velookkaran House, East Fort Trichur–5.

Representations:—

Shri E. R. Abraham,
Advocate, Trichur–3. .. For *Management.*

Shri K. K. Vasu Panicker,
Advocate, Trichur–3. .. For *Workmen.*

AWARD

The workman herein was dismissed from the service of the management on 24-4-1974. The only issue referred in this dispute for adjudication is the legality of that dismissal.

2. In the claim statement filed by the workman it is stated that he had been working as an Accountant in the management Textiles. He started his service there in April 1914 and on the date of dismissal he had completed 30 years of service. Sometime during 1971 an association of the Staff Members in the Textile Mill was formed and the workman concerned was Treasurer of that Association. Since he being an active worker and Treasurer of that association, the management was not at all happy about his working and they were thinking of throwing him out from service some how. At one occasion he was depromoted from the post of Accountant he was holding for the last several years and he was posted at the Factory for giving token to workers. This was clearly a victimisation and that resulted in pen-down strike by the employees. Later the management declared lockout in the establishment. However the District Labour Officer intervened and convened a conciliation conference on 13-7-1971. In that conference it was agreed that both parties would approach the Government jointly for reference of the dispute regarding denial of 14 days salary to the workman. It is alleged that although the workman submitted the duly filled up form to the legal advisor of the management company, the management refused to send the joint statement to the Government as agreed to by them at the conference convened by the District Labour Officer. According to the workman in these back grounds the management proceeded against him and dismissed him ultimately.

3. By a letter dated 21-11-1973 the workman was placed under suspension pendnig enquiry. The charge levelled against him was that during duty hours he was found sleeping. The reason for sleeping was also stated in Ext. W1 letter dated 21-11-1973. It is alleged that the workman was working in two other shops also on part time basis and because of the over strain in the work he was sleeping always. He was called upon to state the reason why he should not be dismissed from service. To this letter reply was given by the workmen on 25-11-1973 itself. Ext. W2 is the reply to Ext. W1 notice. He had completely denied the allegations levelled against him in the memo of charges contained in Ext. W1. Then after another set of memo of charges were also given to the workman by Ext. W3 notice. This was on 6-12-1973. In this notice no mention was made about the charges contained in Ext. W1 but it contained a new set of allegations. It is alleged in Ext. W3 that while the workman was writing accounts, he used to commit several discrepancies and this had resulted in several mistakes in the accounts. It is alleged that certain entries instead of writing them in the current account register of the State Bank of India, Trichur Branch, those were entered in the overdraft account in the same Branch operated by the Managment. In addition to that, the receipts through cheques and drafts were entered in the overdraft account. This sort of

account writing, according to the management, was against the usual method of writing of the account. Ext. W3 was also replied by the workman through Ext. W4. It is stated in Ext. W4 that there was no change in method of writing of accounts and he was following the same methods as in the past. All the entries were made only after due endorsements of bills and cheques by the Managing Partner Shri Cheru. Most of the cheques and bills were lacking details regarding the names of parties but those could be ascertained only with the help and advise of the Managing Partner who used to be in the establishment throughout the day. According to the workman the practice he was following for the last several years was being continued and there was no variation in the method of writing the account at all.

4. The management was not satisfied with the explanation submitted by the workman against two memorandums of charges contained in Ext. W1 and W3. Therefore the management decided to conduct a domestic enquiry. MW2 was appointed as the Enquiry Officer. In the course of enquiry the workman cited MW2 as one of the witnesses for him. At that stage MW2 relinguished his assignment and then after MW1 was appointed as the Enquiry Officer. In the domestic enquiry, witnesses were examined on the side of workman and the management. Before the closing of the enquiry by Ext. MW1, the third instalment of charges was also served on the workman. The purport of the third memo of charges, according to the workman, was to protract the enquiry proceedings but the management had to speed up the enquiry at one stage contrary to their original plan since by that time a new legislation viz., Kerala Payment of Subsistance Allowance Act come into force. Ext. M1 is the third memo of charges dated 3-3-1974. Ext. M2 reply was given by the worker on 19-3-1974 on the next day of the date of receipt of Ext. M1. In Ext. M2, request was made by the workman for the production of certain account books relating to the periods 1969-1970, 1970-1971 and 1971-1972. The management refused to produce those contending that the enquiry was in relation to the discrepancies committed by the workman in writing the account for the year 1972-1973, and therefore the previous accounts had no relevancy. The enquiry was closed on the next day itself. On the basis of the findings of the Enquiry Officer, the workman was dismissed by Ext. W6 order dated 24-4-1974.

5. In the statement filed by the management, the claim of the workman that he was an Accountant in the Textile is denied. According to them he was only a Clerk. The claim of the workman regarding his starting of service from April 1944 is also disputed by the management. It is stated that the workman had sought part time employment at St. Joseph's Textiles, West Fort, Trichur and K. R. V. Textiles and only because of his over strain in the work, he began to sleep while on work With regard to the transfer of the workman to the factory from office, the case of the management is that he was sent over there in a leave vacancy. As an employee of the establishment, the workman is bound to go over there.

He was doing the work of Accountant as directed by the management and his transfer to the factory was not in any manner a demotion. There was no reduction in his salary on account of his transfer to the factory. The contention of the workman that management had denied him 14 days of wages is also disputed. According to the management, if the workman was legally entitled for 14 days wages, he could have very well moved the appropriate authorities for getting the same. On the allegation of management's inaction to forward a joint application to the Government for reference of the matter in relation to denial of 14 days wages, management's contention is that the workman had not cared to submit within time his willingness in writing for the reference of the matter and hence joint petition could not be forwarded to the Government. The allegation that the worker had submitted his willingness to MW2 was also denied in the statement filed by the management. The management has got an alternative contention on this aspect. According to them, the conciliation settlement Ext. W8 was signed on 13-7-1971 and as per the settlement the joint application had to be submitted within a fortnight from 13-7-1971. But the workman had submitted his declaration only on 12-8-1971. Therefore the contention of the workman that the management failed to forward the joint application to the Government is of no subsistence. The management firm is having three types of accounts in the State Bank of India, Trichur. They are ordinary account, bills discounting account and lock and key account. Mistaken entries in these accounts would usually cause great hardships. Various mistakes such as over writing, interliniations, change of names, and entries under wrongheads were several in numbers. An experienced person like the workman should not have commited such mistakes and those mistakes were committed purposefully and in order to harass the management. Moreover, these mistakes were there only from 14-7-1973, the date of signing of Ext. W8 settlements. The management also denied the allegation of the workman that his dismissal was a measure of victimisation.

6. After the filing of respective statements by the parties, the Industrial Tribunal, Calicut which had jurisdiction then considered the preliminary issue on the validity of the enquiry conducted by the management. To examine that question, witnesses on the side of management and workman were examined and certain documents were also produced and marked. The workman alleged that no opportunity was given to him for the perusal of certain documents which according to him were very relevent. The workman contended that the mistakes of the types which were pointed out by the management in the writing of account for the year 1972-1973 were there in previous years also and those were not at all considered by the management as having any significance. In order to show that, he requested for the production of documents of the years 1969-1970, 1970-1971 and 1971-1972. But the management refused to produce those documents contending that there was no relevancy in producing those documents. The Enquiry Officer after upholding the contention of the management completed the enquiry in a hasty manner.

7. The Industrial Tribunal, Calicut found that the Enquiry Officer had not considered the defence put up by the workman and held the enquiry as not proper. Afterwards both parties were given opportunity to adduce fresh evidence.

8. The preliminary order was passed on the question of validity of the enquiry on 16-1-1970. Against the order of the Industrial Tribunal, Calicut, on the question of validity of the enquiry, the management moved the High Court of Kerala by filing a writ petition. The High Court by the judgment dated 17-9-1979 in O. P. No. 2442/79 directed the Tribunal to consider the whole matter a fresh in the light of the evidence adduced.

9. MW3 is the Managing Director of Kunnath Textiles. He was recalled and examined before this Court. On the side of workman, WW1 was also recalled and examined. The evidence in this case mostly consists of the documents produced by the management as their own as also documents produced as directed by this Court.

10. For the consideration of the issue referred for adjudication the status and designation of the workman concerned in the dispute is not at all relevant. Anyhow both sides attempted to adduce evidence on that question and hence I am deciding that as a side issue. The case of the workman is that he was working as an Accountant at the time of his suspension. But the management's case is that the workman never had been an Accountant. To prove his case, the workman had produced before this Court Ext. W5 series which are the Professional Tax receipts issued by the Ayyanthole Panchayat. Ext. W5 series are the receipts issued by the Ayyanthole Panchayat after collecting Professional Tax. Ext. W5 relates to the period from 1961 onwards. In all these receipts the designation of the workman is shown as Accountant. The Management has not adduced any evidence to contradict the claim of the workman that he was an Accountant. On the question of salary received by the workman at the time of his suspension also, the Management has no dispute. According to the workman he was receiving Rs. 247.50 per month.

11. The background which lead to the initiation of disciplinary proceeding against the workman has to be considered while examining the propriety of punishment. It is an admitted fact that in 1971 staff union was formed in the management establishment with the active participation of the workman. He was the Treasurer of the union. Possibly the formation of the union might have annoyed the management. Their first attempt was to transfer him from the office to the factory as a token distributor. It is very surprising to note that a person who was responsible for writing accounts which is supposed to be a major work, was asked to do the work of a token distributor. The version of the workman is that his sending to the factory as a token distributor was virtually a demotion and that was why he did not report for duty at the factory. In fact there was an agitation on this demotion and transfer. There was pen-down strike by staff which later resulted in lockout of the management establishment. However that was settled on the

basis of conciliation talk held at the instance of the District Labour Officer. These facts are admitted by the management also.

12. On the question of irregularities in the writing of account by the workman, evidence was adduced in detail by the Management. In the cross-examination MW3 has admitted that the discrepencies in the accounts were dictated by them as early as during July 1973. Yet, when show cause notice was issued to the workman on 21-11-1973 no such irregularities in the writing of accounts were alleged in the memo of charges. The only allegation in Ext. W1 is that the workman was found sleeping during the working hours by sitting in the chair. That was the only allegation against the workman. The reason for such sleeping was also stated by the management in Ext. W1 letter. By an elaborate reply the workman had repudiated all the charges with regard to his sleeping during working hours as also his work at some other places. Without mentioning anything about Ext. W1 letter and Ext. W2 reply, another show cause notice Ext. W3 was issued on 6-12-1963. In that letter certain irregularities in general were stated and no particular irregularity was specifically stated. Ext. W3 contained only a vague statement of allegation. The workman was asked to reply Ext. W3 within four days and accordingly he submitted his explanation on 10-12-1973 itself. After this the enquiry was started. The enquiry officer was one Mr. A. A. Davis to whom once the workman had entrusted his consent letter for being forwarded to the Government after the conciliation settlement Ext. W8. At the time of enquiry the workman cited Mr. A. A. Davis as one of his witnesses. Then after Mr. Davis relinquished his assignment as the Enquiry Officer and in his place one Neelakandan Namboodiri was appointed as an Enquiry Officer.

13. At the fag-end of closing of domestic enquiry additional memo of charges were served on the workmen. Ext. M1 contained charges showing various irregularities and discrepancies in the writing of accounts. Since the charges levelled against are on the basis of discrepancies in the accounts, the workman sought for time for the perusal of document. But the Enquiry Officer was not prepared to give him time and the enquiry was closed on the next day itself.

14. Before going to the evidence adduced in this case, certain factors will have to be considered to find whether the workman was actually guilty and whether the management had any bonafides in taking action against the workman. It has come out in evidence that discrepancies in the matter of writing of account by the workmen were known to the management as early as July 1973. When the fact remained so, it is very difficult to understand why the management issued Ext. W1 charge memo to the workman without stating anything on the irregular writing of accounts. In Ext. W1 it is only stated that the conduct on the part of the workmen was of grievous nature for which the maximum punishment of dismissal could be awarded. The only charge against the workman in Ext. W1 is that he used to sleep while sitting in the office. Only that charge was raised against the workman for awarding the punishment of dismissal. Ext. W1 was replied very elaborately

by the workmen. He had completely denied any kind of incident of sleeping as alleged by the management. He has also stoutly denied the allegation that he was employed in any other establishment at Trichur. After the receipt of that explanation, the management remained silent for sometime. Then comes Ext. W3 memo of charges. That also contained only general statement of allegation. No particular irregularity was shown in Ext. W3 memo of charge also. The workman has stated in his explanation to Ext. W3 that without getting specific details of charges he is not in a position to know what exactly the charges against him. Despite this reply, the management decided to conduct a domestic enquiry with the vague statement of allegation on the discrepancies in the account writing. From this conduct of the management it is evident that they have no clear case against the workman even before initiating action against him or even after that. Their attempt was to shunt him out from the employment some how. If they were well aware of the discrepancies or irregular method of writing of account by the workman as against the normal practice, they could have very well framed the charges at the time of issuance of Ext. W1 itself or at least before the issuance of Ext. W3. The management, in fact, failed in their attempt to frame proper charges. Only when they found that the reply submitted by the workman could not be easily met, they thought of issuing a detailed memo of charges. That resulted in issuance of Ext. M1 memo of charges. To that Ext. M1 memo of charges the workman was asked to submit his explanation within 4 days. The workman replied it by saying that in order to give suitable explanation, he wanted to peruse the concerned document. But the management refused to make available all those documents. The Enquiry Officer also up-held the stand of the management saying that the records kept by the management for the period from 1969 to 1972 were not relevant to counter the charge contained in Ext. M1.

15. Coming to the evidence adduced with this case it can be seen that the management's attempt was to show that there are innumerable mistakes in the entries made in various accounts. In order to show various mistakes such as overwriting, interlineations, change in names, type of the bank account and entries under wrong-heads, the management has produced Ext. M5 day book. Various instances of mistakes were pointed out from Ext. M5.

16. The case of the workman is that similar wrong entries used to crept in the account due to various reasons in the past periods also. According to the workman, the cheque book register is written by one Clerk. He is writing only the day book and ledger. The customers' register is maintained by another clerk. The manner in which accounts are getting tallied in the year end is explained by the workmen in the following manner :—

> എല്ലാ വർഷവും ഷെഡ്യൂളിൽ ററാലി ആകാതെ വരാറുണ്ട്. ഷെഡ്യൂളും കൂട്ടുക എന്നു പറയുന്നതും അക്കൗണ്ടു ററാലി ചെയ്യുക എന്നു പറയുന്നതും ഒന്നുതന്നെയാണ്. ററാലി ആകാതെ വന്നാൽ മാനേജുമെൻറിൻെറ ആളും ചെക്കുരജിസ്ററർ എഴുതുന്ന ആളും കസ്ററമേഴ്സ് ബുക്ക് എഴുതുന്ന ക്ലാർക്കും ഞാനും കൂടിയാണ് പിന്നീടു ശരിയാക്കു

ന്നത്. കസ്റ്റമേഴ്സ് ബുക്കും ചെക്കുബുക്കും ററി. ററി. അന്നമ എന്ന ക്ലാർക്കാണ് എഴുതുന്നത്. ഞാൻ ഡേ ബുക്കും ലഡ്ജറും എഴുതും. സ്റ്റേററ് ബാങ്കിൽനിന്നും കിട്ടുന്ന മൂന്നുതരം സ്റ്റേററ്മെൻറ് സെയിൽസ് ബുക്ക് പർച്ചേസ് ബിൽ ക്യാഷ് ബുക്ക് ബാങ്ക് വൗച്ചേഴ്സ് ഇവയെല്ലാം ഞാൻ ഡേ ബുക്കെഴുതുമ്പോൾ നോക്കും. ഈ ബുക്കുകളെല്ലാം നോക്കി വൈകിട്ട് ക്ലോസു ചെയ്യുന്ന സമയം അക്കൗണ്ടു ക്ലോസു ചെയ്യാൻ സാധിക്കുമായിരുന്നില്ല. സ്റ്റേററ് ബാങ്കിൽനിന്നും പാസ്ബുക്കു കിട്ടുകയില്ല സമയത്തിന്. സ്റ്റേററുമെൻറു മാസം തികയുന്നതിനുശേഷമേ തരുകയുള്ളൂ. സ്റ്റാഫ് മെമ്പേഴ്സ് എല്ലാവരും എഴുതുന്ന ബുക്കുകൾ എല്ലാ ദിവസവും എം. ഡബ്ല്യൂ. 3 പരിശോധിക്കാറുണ്ട്. അതുകഴിഞ്ഞേ പോകാൻ പററൂ. കണക്കിൽ പിശകുണ്ടായാൽ വെട്ടിയെഴുതാൻ പറയും. അപ്രകാരം വെട്ടിത്തിരുത്തി എഴുതും. അങ്ങനെയുണ്ടായ വെട്ടിത്തിരുത്തലിനെക്കുറിച്ചാണ് ഇവിടെ ആക്ഷേപം മാനേജുമെൻറ് പറയുന്നത്.

17. The allegation of the management is that only after July 1973, the workman began to write the accounts in the most unsatisfactory manner. To counter this, attempt was made by the workman to show that same kind of discrepancies were there in the writing of accounts in the previous years also and in none of those years no objections were raised by the auditors while preparing the balance sheet and profit and loss account. MW3 has admitted that in the previous period no complaints were raised by the Chartered Accountant with regard to the method of writing of Accountant by the workman. He had also admitted that the relevant year 1972-73 also, no adverse remarks were made by their Accountants. But he explained that telephonically the Auditors had complained about the wrong entries made in the record book. Anyhow the Accounts for the year 1972-73 were also got tallied. On the basis of trial balance given by the management, Auditors prepared the balance sheet also. In order to show that these kinds of wrong entries used to crept in the previous years also, the workman has adduced evidence through the documents produced by the management. Ext. W9 is the day book for the year 1969-70. In that at page 35 in the entry "Sobhana Textiles" there is a strike and instead the name of the "Indian Silk House, Kayamkulam" was written. Ext. W10 is the day book for the year 1970-71. At page 301 in the entry "Remesh Cloth Stores, Pardala" there is a strike and after that Thankappan Nair, Paravoor was inserted. Similarly on page 54 also there is scoring. Ext. W12(a) and W12(b) were marked at the instance of the workman to show that such corrected entries and wrong entries were numerous in the previous years also and only at the year end wrong entries will be corrected and accounts were got tallied. Ex. W13 is also indicative of such kind of mistake of the year 1971-1972. Therefore relying on various accounts for the years from 1969 to 1972 the attempt of the workman was that similar mistakes were there in the previous years also and those were not all considered as serious by the management and not even at single occasion, he was given any kind of warning. If these sort of mistakes were as serious as the management management thinks now, the mistakes occured in the previous years could have been pointed out and proper direction could have also been given. Having not done that, the Management

cannot raise such allegation as they are now raising in Ext. W3 and Ext. M1 show cause notices. If the workman was repeating the mistakes even after warning or proper direction, of course the management is justified in initiating action against the workman for his serious lapses.

18. In Ext. M1 show cause notice it is alleged that the action of the workman was in order to make illegal gain and thereby to cause loss of money and reputation to the management as also to the customers. It is also alleged that the workman had cheated the management through his irregular writing of accounts. There is no evidence to show that the workman had gained anything illegally. He has not gained anything. At the same time no loss was also caused to the management. Therefore the main part of the charges levelled against the workman remain as unproved. At the time of hearing of his case it was conceded that the workman had not gained anything illegally. It is also admitted that there was any sort of complaints from any of the customers regarding the loss of money or inconvenience caused to them. Therefore, according to me, the main part of the charges levelled against the workman will go.

19. The management has awarded to the workman the maximum punishment of dismissal from service merely on the allegation that certain discrepancies were there in the accounts. Evidently he was an Accountant for the last several years in the management's establishment. The workman has succeeded in proving that the discrepancies as alleged by the management in the writing of account for the year 1972-73 were there even in the previous years also and such discrepancies were happening only because of the insufficient dates for writing the accounts. Whenever there were mistakes those were rectified at the year and after having discussions with the other staff and also with the Managing Director MW3. It is not proved that in the relevant year there was complaints from the Chartered Accountants while auditing the accounts written by the workman.

20. The allegation of the workman is that disciplinary actions were initiated only because of his union activities. This is evident while going through the charges Ext. W1 and W3. As stated earlier, if the management was of the opinion that very serious irregularities were there, they could have very well initiated proceedings with specific charges regarding the discrepancies. These actions of the management will show that only because of the vindictiveness, they initiated action against the workman.

21. In view of the discussion made above, I hold that the dismissal against the workman is illegal and therefore I am setting aside the same. The workman is entitled for reinstatement in service with half of the back wages. On reinstatement, he should be posted as Accountant. For calculating the arrears of wages, Rs. 247.50 p. m. received by the workman at the

time of his suspension on 21-11-1973 shall be the basis. Therefore this award is passed directing the management to reinstate the workman in service. If the management fails to reinstate the workman within one month from the date of publication of the award in the official gazette, the workman will be entitled for a compensation of Rs. 30,000 in lieu of his reinstatement. The compensation will be in addition to his entitlement for the arrears of wages as stated above.

K. KANAKACHANDRAN,
Industrial Tribunal.

Appendix

Witness examined on the side of the Management:—

MW1. K. N. Neelakantan Namboothiry.
MW2. A. A. Davis.
MW3. K. T. Cherukutty.

Exhibits marked on the side of the applicant:—

Ext. M1. Letter dated Nil addressed to V. K. Thomas.
,, M2. Letter dated 19-3-1974, addressed to the Management.
,, M3. Enquiry Proceedings.
,, M4. An entry of the Enquiry file.
,, M5. (Series) Day Books.
,, M6. (Series) Ledgers.

Witness examined on the side of the workmen:—

WW1. V. K. Thomas.

Exhibits marked on the side of the workmen:—

Ext. W1. Letter dated 21-11-1973 addressed to Sri V. K. Thomas.
,, W2. A true copy of the letter dated 22-11-1973 addressed to Shri K. T. Cherukutty.
,, W3. Letter dated 6-12-1973 addressed to Sri V. K. Thomas.
,, W4. Letter addressed to the Management.
,, W5. (Series) Receipts from Ayyanthol Panchayat (13 in number).
,, W6. Letter dated 24-4-1974 addressed to Sri V. K. Thomas.
,, W7. Proceedings of the Dy. Labour Commissioner.
,, W8. Memorandum of settlement.
,, W9. Ledger for the Malayalam era of 1147.
,, W9(a). Entry in the page No. 35 of the above Ledger.
,, W10. Day Book for the period from 17-8-1971 to 16-8-1972.
,, W10(A). Day Book for the period from 17-8-1970 to 16-8-1971.
,, W11. Day Book for the period for 1969-70.
,, W11(A). An entry in page No. 54 of the above book.
,, W12(a). Entry in the page No. 331 of the above book.
,, W12(b). Entry in the page No. 831 of the above book.
,, W13. Day Book for the period from 17-8-1971 to 4-3-1972.
,, W14. Day Book for the period from 17-4-1971 to 17-8-1971.

Kerala Gazette No. 46 dated 22nd November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1057/83/LBR. *Dated, Trivandrum, 19th September 1983.*

The award of the Industrial Tribunal, Alleppey in respect of the dispute between the Manager, Instant Tea Division, M/s. Tata-Finlay Limited, Munnar and the workmen of the above concern represented by (1) President, Tata-Finlay Employees Association, Munnar and (2) President, Tata-Finlay Instant Tea Employees Union, Munnar received by Government on 5-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,
Deputy Secretary to Government.

In the Court of the Industrial Tribunal, Alleppey

(Dated this the 3rd day of August 1983)

Present :

SHRI K. KANAKACHANDRAN, B. SC., LL. B.,
Industrial Tribunal

In

M.P.No.54/83

In

INDUSTRIAL DISPUTE No. 50/82

Between

The Manager, Instant Tea Division, M/s. Tata-Finlay Limited Munnar.

And

The workmen of the above concern represented by 1. President Tata-Finlay Employees Association, Munnar and 2. President Tata-Finlay Instant Tea-Employees Union, Munnar.

Representations :—

M/s. Menon & Pai, Advocate, Ernakulam. .. For *Management.*

Sri K. Damodara Kurup, Advocates Cochin. .. For *Association.*

M/s K. Balachandran & M. Jayakumar, Advocates, Cochin-17. .. For *Union.*

G. A. 136/V.

INTERIM AWARD

In this application the prayer of the workmen is to pass an Interim Award pending the above dispute. The issue referred for adjudication were based on the charter of demands submitted by two unions viz., Tata-Finlay Employees Association and Tata-Finlay Instant Tea Employees Union, Munnar. One of the demands raised by the workmen is in respect of revision of wages to the general workers. Altogether there are 11 demands from the workmen.

2. It is stated in the petition that during the negotiations on the charter of demands, the management offered an increase in their wages at the rate of Rs 2.20 per day for each worker with effect from 1-1-1980. The workmen were in receipt of wages in terms of a settlement effected on 26-2-1979. As per the above settlement the workmen were getting the basic pay of Rs 5, Dearness Allowance of Rs. 2. 64 and wage differential of Rs. 1.46. The above rate of wages was for one day's work. According to the petitioners, the employees working in the Instant Tea factory are not like Plantation workers and they are not enjoying many of the facilities which are now being enjoyed by the Plantation workers. Therefore the prayer in the petition is that the workmen may be granted an increase of Rs. 2.20 per day from 1-1-1980 pending adjudication of the above dispute.

3. The management filed written objection against the application for interim award. According to them the workman had not made out any case for granting interim relief by means of an interim award. According to them the workmen concerned in the dispute are a group of 63 general workers employed in the Instant Tea Factory. Their work is of unskilled nature. The nature of work of these workmen are also similar to the work of unskilled general workers employed in the Black Tea Factory. It is also contended that the wages and other conditions of service of the workmen concerned in the dispute had been modelled and patterned as in the case of general workers in the Black Tea Factories. The managements' apprehension is that any increase in wages by way of interim award will upset the industrial peace in the plantation industry. It is also stated that the management has no financial capacity to bear the financial burden arising out of any interim award. The wages paid to the workmen including variable D. A. are fair, reasonable and adequate.

4. The matter was argued at length by counsels appearing for both sides. It was submitted that in three wage revisions effected in the year 1972, 1975 and 1979, there was no enhancement in the basic wages of the workmen. The D. A granted to them at the rate admissible to plantation workers was inadequate to neutralise the spiralling cost of living. According to the unions the wages paid to the workmen do not reach anywhere near the minimum subsistence level. The counsel for the management had submitted that in the previous agreement there was provision for wage differential. According to him such kind of payment of wage differential

was unnecessary. Anyhow the management continued such payment considering the best interest of the workers as also of plantation industry. The management was frank enough in conceding one aspect that they had offered an increase of Rs.2.20 per day after the expiry of the settlement dated 26-2-1979. The management has stated in their written objection in the following manner:—

> At the final stage of the negotiations, on the principle of industry cum-region, the Management made a final offer of Rs. 1.70+50p.=2.20 being the exact amount of increase given to the tea factory workers since the settlement dated 26th February 1979 in full and final settlement of all the demands referred for adjudication involving financial commitments. This was not acceptable to the Tata Finlay Employees Association. Hence the offer was withdrawn. It is therefore unfair and unjust to rely upon the same.

5. The interim relief the workmen are now seeking Rs.2.20 per day is not confined to the revision in wages alone. In fact there was an offer, as frankly admitted by the management, to pay Rs. 2.20 per day by app ying the principle of industry-cum-region. From the statement of the management it is clear that the figure Rs. 2.20 per day was arrived at by applying the principle of industry-cum-region. Therefore according to me the offer made by the management could be accepted as a basis for an adhoc increase. The management offered increase at such rate while taking into account all aspect of the matter. An increase of Rs.2.20 per day to the workmen as an interim measure, will not in any way prejudice the Management.

6. In view of the above, I pass an interim award directing the management to pay Rs. 2.20 per day from 1-1-1980 to the workmen concerned in the di pute. The management will pay the arrears within one month from the date of publication of this Interim Award in the Official Gazette.

K. KANAKACHANDRAN,
Industrial Tribunal.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION.

G. O. (Rt.) No. 1149/83/LBR. *Dated, Trivandrum, 7th October* 1983.

The award of the Labour Court, Ernakulam in respect of the dispute between the Managing Partner, Mini Industries, Parakavil, P. O. Perincherry, Trichur District and the workman of the above concern represented by the Secretary, Mini Industries Labour Union, Parakavil, P. O. Perincherry, Trichur District received by Government on 16-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Dated Thursday, the 8th day of September, 1983

Present :

SHRI N. SUKUMARAN, B.SC., B. L.,
Presiding Officer

INDUSTRIAL DISPUTE No. 8 OF 1980

Between

The Managing Partner, Mini Industries, Parakavil, P. O. Perincherry, Trichur District.

And

The workman of the above concern represented by the Secretary, Mini Industries Labour Union, Parakavil, P. O. Perincherry, Trichur District

Representations :—

M/s T. Ramakrishnan &
T. K. Bhaskaran,
Advocates, Trichur-3 .. For *Management*

Shri K. V. K. Panicker,
Trade Union Official, Trichur .. For *Union*

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 108/80/LBR dated 18-1-1980 is "Dismissal of Snri C. Vijayakumar".

2. In the charter of demands, copy of which is appended to the reference, the Union complains that Shri Vijayakumar was dismissed from service with effect from 1-4-1979. According to the Union Shri Vijayakumar had continuous service from 1-11-1977 and the dismissal was by way of victimisation for his Union activities.

3. In the written statement the Management contends that Shri Vijayakumar while working as an Office Assistant made false entries in the muster roll with a view to create difficulties to the management and therefore he was offered alternate job since he was found unfit to continue as an Office Assistant requiring the confidence of the Management and Shri Vijayakumar had refused to accept the same. Since the Management cannot repose further confidence in Shri Vijayakumar it is not possible to reinstate him in the position as an Office Assistant. Since he refused to take up alternate job he is not entitled to any reliefs.

4. The Union had filed a rejoinder denying the allegation that Shri Vijayakumar had committed the misconducts attributed to him and reasserting the claim for reinstatement.

5. The Managing Partner of the Management Firm was examined as MW1. He produced and proved Exts. M1 to M9 through whom the Union had proved Exts. W1 to W4. The Union did not adduce any evidence even though several opportunities were given to it to adduce evidence. When the case came up for that matter on 7-9-1983 at my Trichur Camp the Union requested further time for evidence. I rejected that request and the case was taken up for award after hearing both sides.

6. MW1 has given evidence that Shri Vijayakumar had fabricated entries in Ext. M1 muster roll concerning himself and other workmen. It is seen from Ext. M1 that different dates were entered as the origin of his own service. Similar inconsistent entries are available in it concerning the other workmen also. MW1 has given evidence that the inconsistent entries were made by Shri Vijayakumar who was in charge of preparation of those documents. Shri. Vijayakumar has not come forward to state otherwise or to explain how the discrepancies had occurred. According to MW1 the origin of the services of Shri Vijayakumar and other workmen were antedated by Shri Vijayakumar with a view to claim inflated length of service. There are apparent defects in the record maintained by Shri Vijayakumar and he had a duty to come forward and explain the discrepancies. His reluctance to give evidence speaks volumes. No satisfactory explanation is given by the Union as to why Shri Vijayakumar is not coming forward to give evidence. In these state of affairs the testimony of MW1 has to be accepted. When that is done it can safely be concluded

that Shri Vijayakumar was really guilty of the misconduct attributed to him. MW1 has also given evidence with relevant documents that Shri Vijayakumar was offered alternate job which does not require that much of confidence of the Management as an Office Assistant and that he refused to accept that offer. In these state of affairs Shri Vijayakumar is not entitled to any reliefs.

7. In the result an award is passed to the effect that Shri Vijayakumar is not entitled to any reliefs.

Ernakulam,
8-9-1983.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witness examined on the Management's side:

MW1 Shri M. M. Komu.

Exhibits marked on the Management's side:

Ext. M1. Muster roll of the Management Firm from 1-4-1978 to 31-12-1978.
,, M2. A letter dated 14-3-1979 from Shri Vijayakumar to the Management.
,, M3. A communication dated 17-3-1979 from Shri Babu.
,, M4. Leave application of Shri Vijayakumar dated 20-3-1979.
,, M5. Copy of Advocate's notice dated 30-3-1979 issued to Shri Vijayakumar.
,, M6. A communication dated 6-4-1979 from Shri Vijayakumar to the Management.
,, M7. Copy of a communication dated 19-4-1979 issued to Shri Vijayakumar from the Management.
,, M8. E. S. I. return of declaration form dated 16-6-1978 regarding Shri Vijayakumar and Shri Devassy, K. O.
,, M9. Voucher for Rs. 100 dated 31-3-1979 signed by Shri Vijayakumar.

Exhibits marked on the Union's side:

Ext. W1. A letter dated 21-3-1979 from the Management to the District Labour Officer.
,, W2. A communication dated 27-3-1979 removing Shri Vijayakumar from service.
,, W3. Copy of a communication dated 28-3-1979 from the Union to the Management.
,, W3. (a). Postal acknowledgement signed by the Management on 29-3-1979.
,, W4. Advocate's notice dated 30-3-1979 issued to Shri Vijayakumar.
,, W5. E. S. I. Corporation identity card issued to Shri C. Vijayakumar.

Kerala Gazette No. 46 dated 22nd November 1983.

PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1151/83/LBR. *Dated, Trivandrum, 7th October 1983.*

The award of the Labour Court, Ernakulam in respect of the dispute between the Marketing Manager, FACT Ltd., Udyogamandal, Marketing Division, Udyogamandal and the workman of the above concern Shri K. Rajamohan Nair, Chekkittavila Veedu, Mangad, Trivandrum-6 received by Government on 4-10-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Ernakulam

Friday, the 30th day of September 1983

Present:

SHRI N. SUKUMARAN, B. SC., B. L.,
Presiding Officer

INDUSTRIAL DISPUTE No. 79 OF 1981

Between

The Marketing Manager, FACT Ltd., Udyogamandal, Marketing Division, Udyogamandal

And

The workman of the above concern Shri K. Rajamohan Nair, Chekkittavila Veedu, Mangad, Trivandrum-6.

Representations:

M/s. Menon & Pai, Advocates, Ernakulam. — For *Management*.

Shri M. Ramachandran, Advocate, Ernakulam. — For *Workman*.

G.A.158/L.

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 1096/81/LBR dated 25-8-1981 is "Dismissal of Shri K. Rajamohan Nair, Depot Assistant, Kanhangad, Central Depot."

2. Certain facts are admitted and they are the following:—

Shri Rajamohan Nair was appointed as a Depot Assistant by the Management and posted initially at Nedumangad on 24-4-1968. The same year he was transferred to Kanhangad in the same capacity. On 30-12-1968 he issued a bill to a customer for Rs. 104.64 and collected that much money for the sale of 200 Kgs. of ammonium sulphate. The bill No. was 185252. Corresponding to that original issued to the party duplicate and triplicate carbon copies are maintained for official use. In those two copies the transaction was recorded as covering an amount of Rs. 52.32 for the sale of 100 Kgs. of ammonium sulphate. This irregularity was detected by the immediate superior of Shri Rajamohan Nair on the same day and disciplinary proceedings were initiated against him. He was dismissed after a domestic enquiry early in 1969. He did not raise any dispute till the end of May 1980 when he filed a complaint before the District Labour Officer, Alwaye that he was dismissed on insufficient grounds and therefore he is liable to be reinstated. On failure of conciliation the case has resulted in this reference.

3. The Management in its written statement contends that the reference itself made after a decade of the actual dismissal on the basis of a stale claim is bad and therefore no relief could be granted. It is further contended by the Management that Shri Rajamohan Nair had admitted the commission of misappropriation and the lame excuse offered by him by way of explanation was not at all satisfactory and his guilt was proved to the hilt in a domestic enquiry conducted and the dismissal was the appropriate punishment. The case advanced by Shri Rajamohan Nair is that there was only some inadvertant mistake in keeping the records and there was no motive to commit misappropriation. What is stated by him is that he had issued the original of the bill to the customer without verifying whether the carbon impressions were proper and he detected subsequently that the duplicate and triplicate copies were blank and he had enquired of the Attender who weighed and delivered the manure to the customer as to what exactly was the quantity involved and the latter purposely gave a false information that the quantity involved was only 100 Kgs. and he supplied the details accordingly in the duplicate and triplicate bills and that is how the mistake had crept in. He also suggests that the Attender had some special motive to mislead him. His case is that he is really innocent and there was only an inadvertant and unavoidable mistake.

4. The Management expressed its inability to produce the relevant records concerning the domestic enquiry since the enquiry and the dismissal were in 1969 and the reference was made only in 1981. The Management therefore opted to adduce fresh evidence. It is the admitted case that there was a domestic enquiry. That it is so is evident from the pleadings as well as the copy of the complaint of the worker attached to the reference. MW1,

the Area Manager of the Management Company, also has given evidence that he conducted the domestic enquiry. So this is a case where a domestic enquiry was conducted. But we cannot consider the validity of the same at this length of time since the Management had not taken care to keep the records as no dispute was raised within a reasonable time.

5. Now the question is as to whether the Management had succeeded in establishing the guilt of Shri Rajamohan Nair by fresh evidence before this Court. MW2 was the Senior Sales Officer of the Management Company at Kanhangad at the relevant time. He is now retired from service. It was he who had detected the misconduct in question. He has given evidence that Shri Rajamohan Nair had given a statement admitting his guilt and craving for mercy. It is stated further by MW2 that this employee had committed similar discrepancies on an earlier occasion also and that it was rectified after a warning. He was repeating the offence. Shri Rajamohan Nair had given evidence in support of his contention that there was only an inadvertant mistake in properly placing the carbon papers for preparing the duplicate and triplicate bills and that he was mislead by the Attender with false figures later. But it is admitted that he had issued Ext M1 letter to MW2 admitting that he had misappropriated Rs. 53.32 by dubious methods. Exts. M1 and M2 series are copies of the originals which Shri Rajamohan Nair himself had produced before the Conciliation Officer after he had raised this dispute and they were forwarded to the Management by the Labour Officer and that is how they could produce these documents. Now Shri Rajamohan Nair has a case as WW1 that he had written Ext. M1 on compulsion from MW2. But there is no corroboration of this claim of WW1. MW2 has given clear and convincing evidence that he detected the offence on the same day on which it was committed. The explanation that the Attender fooled Shri Rajamohan Nair is far from convincing. The only inference that could be drawn from the circumstances of this case is that Shri Rajamohan Nair was guilty of the charge of misappropriation.

6. New remains the question as to whether Shri Rajamohan Nair deserves any leniency in the matter of punishment. It is argued that he is a first offender. But the evidence of MW2 is that a similar instance had occurred earlier and that the matter was patched up being the first instance. We have also to remember that this employee was engaged only in April 1968 and this misconduct was committed within a short while in December 1968. It cannot be said that misappropriation of money by fabricating false records to suppress the same is something silly which can be ignored as a minor misconduct. So even if it is assumed that this was a first offence it does not mean that it can be ignored as a minor misconduct deserving a lesser punishment. Hence the punishment of dismissal is proportionate to the gravity of the offence. So this is not a case where the workman could be granted any relief in the matter of punishment by invoking the jurisdiction under Sec. 11-A of the Industrial Disputes Act. In the result an award is passed confirming the dismissal of Shri K. Rajamohan Nair.

Ernakulam,
30-9-1983.

N. SUKUMARAN,
Presiding Officer.

Appendix

Witnesses examined on the Management's side:—

MW1. Shri K. A. Ramachandran.
MW2. ,, T. A. Narayana Iyer.
MW3. ,, Radhakrishnan Nair.

Witness examined on the Workman's side:—

WW1. Shri Rajamohan Nair.

Exhibits marked on the Management's side:—

Ext. M1. A letter dated 30-12-1968 from Shri Rajamohan Nair to the Senior Sales Officer, FACT, Kanhangad.
,, M2. A letter dated 5-6-1980 from the Deputy Labour Officer to the Management.
,, M2 (a). Copy of a petition dated 27-5-1980 submitted before the District Labour Officer by Shri Rajamohan Nair.
,, M2 (b). Explanation of Shri Rajamohan Nair dated 27-5-Nil.
,, M2 (c). Copy of the dismissal order dated 17-4-1969 issued to Shri K. Rajamohan Nair.
,, M2 (d). Copy of show cause notice dated 9-1-1969 issued to Shri Rajamohan Nair.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 1022/83/LBR. *Dated, Trivandrum, 12th September 1983.*

The award of the Labour Court, Ernakulam in respect of the dispute between the Manager, Kadalar Estate, M/s Tata Tea Ltd., Munnar and the workman of the above estate represented by the General Secretary, Tata Finlay Staff and Non Staff Employees Union, (A.I.T.U.C.), Munnar P. O. received by Government on 2-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,

Deputy Secretary to Government.

In the Labour Court, Ernakulam

Saturday, the 27th day of August, 1983

Present:

SHRI N. SUKUMARAN, B. SC., B. L.,

Presiding Officer

In

INDUSTRIAL DISPUTE No. 34 of 1983

Between

The Manager, Kadalar Estate, M/s Tata Tea Ltd., Munnar

And

The workman of the above Estate represented by the General Secretary, Tata Finlay Staff and Non Staff Employees Union, (A.I.T.U.C.), Munnar P.O.

Representation:—

M/s Menon & Pai Advocates, Ernakulam. } For *Management.*

GA. 125/S

AWARD

The issue referred for adjudication by Government as per G. O. (Rt.) No. 634/83/LBR dated 9-6-1983 is "Dismissal of Sri K. C. Mathai, Asst. Conductor, Kadalar Estate, Munnar, P.O.".

2. When the case came up for the first hearing on this day at Munnar the parties submitted that the matter had since been settled between them. A copy of the memorandum of the settlement is also filed. As requested by the parties I am passing this award in terms of that settlement which reads as follows:—

"Terms of Settlement

I The Union on behalf of Mr. K. C. Mathai expresses regret for his past misconduct and assures the Management that if reinstated he will conduct himself properly and carry out his duties to the satisfaction of the management without giving room for any complaint with regard to his work and conduct.

II The management agrees that Mr. K. C. Mathai will be reinstated in service, as a very special case, as a Second Assistant Conductor, with effect from 21st February, 1983.

III Mr. K. C. Mathai, on reinstatement, will not be eligible for any salary/allowances or fringe benefits in respect of the period of his non-employment; but he will be granted continuity of service for gratuity purposes.

IV The Tata-Finlay Staff and Non-Staff Employees Union and Mr. K. C. Mathai accept and confirm that Mr. Mathai has no further claims or dispute against the management, either monetary or otherwise, regarding his dismissal from service on 27th April 1981, and the period of his non-employment up to and including 20th February 1983, and that neither of them will raise any dispute concerning this matter before any forum in future."

An award is passed in terms of the above settlement.

(Camp) Munnar,
27-8-1983.

N. SUKUMARAN,
Presiding Officer.

Kerala Gazette No. 46 dated 22nd November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1175/83/LBR. *Dated, Trivandrum, 12th October* 1983.

The award of the Labour Court, Kozhikode in respect of the dispute between The Proprietor, Jagadambika Theatre, Elapully, Palghat and their workmen represented by the President, Palghat District Cinema Theatre Employees' Union (INTUC-I), INTUC Office, Olavakkot, Palghat-2 received by Government on 17-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. SIVADASAN,
Deputy Secretary to Government.

In the Labour Court, Kozhikode, Kerala State

Dated, this the 25th day of August, 1983.

Present :

HAJEE P. A. SHAHUL HAMEED, B. A. B.L.,
Presiding Officer

In

I. D. No. 43/81

Between:

The Proprietor, Jagadambika Theatre, Elapully, Palghat.	*Management*

And

The President, Palghat District Cinema Theatre Employees' Union (INTUC-I), INTUC Office. Olavakkot, Palghat-2.	*Union*

Representations:—

Sri C. D. Ramalingam, Advocate, Palghat.	: For *the Management.*
Sri P. K. Sundaran, Advocate, Palghat.	: For *the Union.*

AWARD

1. This industrial dispute is referred by the Government as per G. O. Rt. No. 1310/81/LBR dated 20-10-1981 regarding the benefits entitled to five workers on account of closure of the Jagadambika Theatre, Elapully for adjudication. When this reference was received, notices were issued to the parties concerned. Workers appeared through counsel. The Management also appeared through counsel.

2. Today when the case came up before me, it is represented that the entire dispute has been settled out of court. 2nd worker has filed a statement to that effect. Other workers has also filed a statement to that effect. Hence I hold that there is no dispute at present existing between the workers and management.

3. Hence an award is passed holding that there is no dispute existing between the parties requiring adjudication.

4. This award will come into force 30 days after its publication in the Official Gazette.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 25th day of August, 1983.

HAJEE P. A. SHAHUL HAMEED,
Presiding Officer,
Labour Court, Kozhikode.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1129/83/LBR. *Dated, Trivandrum, 5th October, 1983.*

The award of the Labour Court Kozhikode in respect of the dispute between the Secretary, Calicut Co-operative Urban Bank Ltd., No.1538, Kallai Road, Calicut-2 and their workmen represented by the Secretary, Co-operative Bank Employees Union, State Lodge, Jail Road, Calicut-2, received by Government on 17-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,

K. SIVADASAN,
Deputy Secretary to Government

In the Labour Court Kohikode Kerala State

Dated this the 29th day of August, 1983

Present:

HAJEE P. A. SHAHUL HAMEED B.A., B. L.,
Presiding Officer

In

INDUSTRIAL DISPUTE No. 17/1982

Between

The Management of Calicut Co-operative Urban Bank Ltd., No. 1538, Calicut-2 represented by the Secretary, Calicut Co-operative Urban Bank Ltd., No. 1538, Kallai Road, Calicut-2. *Managems*

And

The Secretary, Co-operative Bank Employees Union, State Lodge, Jail Road, Calicut-2. *Union*

Representations:

Sri K. P. Damodaran Nambiar,
Advocate Calicut... For *the Management.*

Sri R. Basant,
Advocate, Calicut... For *the Union.*

AWARD

1. This industrial dispute is referred by the Government for adjudication as per G. O. Rt. No. 476/82/LBR dated 29-4-1932 regarding the lower grade employees working in the Calicut Co-operative Urban Bank with necessary qualifications to be promoted to the higher post and evolving of a policy for future promotions and prescribe channels of promotions. When this reference was received by this court, notices were issued to both parties and both parties appeared through counsels. No statement is filed by anybody.

2. Today when the case came up before me, it is stated that the matter has been settled and the workman concerned does not want to prosecute the matter. A statement to that effect has been filed. In view of the statement. I pass an award holding that there is no dispute pending between the parties requiring adjudication. An award is passed accordingly.

3. This award will come into force 30 days after its publication in the official Gazette.

Dictated to the confidential Assistant, transcribed by him, revised, corrected and passed by me on the 29th day of August, 1933.

HAJEE P. A. SHAHUL HAMEED,
Presiding Officer.
Labour Court, Kozhikode.

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G. O. (Rt.) No. 1131/83/LBR. *Dated, Trivandrum, 5th October* 1983.

The award of the Labour Court, Kozhikode in respect of the dispute between the Secretary, Azhikode Beedi, Workers Industrial Co-operative Society, Azhikode, Cannanore-9 and their workman represented by the Secretary, Cannanore District Beedi and Cigar Workers Union (UTUC), Cannanore-2 received by Government on 17-9-1983 is hereby published under section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order of the Governor.
K. Sivadasan,
Deputy Secretary to Government.

In the Labour Court, Kozhikode, Kerala State

Dated this the 26th day of August 1983

Present:

HAJEE P. A. SHAHUL HAMEED, B.A. B.L.

Presiding, Officer
In

I. D. No. 37/83

Between

The Secretary, Azhikode Beedi Workers Industrial Co-operative Society, Azhikode, Cannanore-9 (Management).

And

The Secretary, Cannanore District Beedi and Cigar Workers' Union (UTUC), Cannanore-2 (Union).

Representations:—

Sri M. P. Govindan Nambiar, Advocate, Tellicherry. — For *the Management*

Sri K. M. Mohammed Kunhi, Advocate, Cannanore. — For *the Union*

AWARD

1. This Industrial Dispute is referred by the Government as per G.O. (RT) No. 754/83/LBR dated 29-6-1983 regarding the denial of employment to Shri P. Pradeepan (M. No. 629) with effect from 20-11-1981 for adjudication. When this reference was received, notices were issued tob oth parties. Both parties appeared in Court. Union has filed a statement. stating that the workman is dismissed without conducting an enquiry and he has not been given an opportunity for being heard and prayed that the workman may be reinstated with arrears of wages from 20-11-1982 along with other usual benefits.

2. The counsel for management submitted before me that the workman has not been dismissed from service and he was not denied the work and he can do the work at any time.

3. . The learned counsel for the workman submitted that there may be an award reinstating the workman.

4. Hence I hold that the workman may be reinstated. An award is passed accordingly.

This award will come into force 30 days after its publication in the official Gazette.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 26th day of August, 1983.

HAJEE P. A. SHAHUL HAMEED,
Presiding Officer.

Labour Court,
Kozhikode.

Kerala Gazette No. 46 dated 22nd November 1983.
PART I

GOVERNMENT OF KERALA

Labour (A) Department

NOTIFICATION

G.O. (Rt.) No. 1153/83/LBR. *Dated Trivandrum 7th October* 1983.

The award of the Industrial Tribunal Calicut in respect of the dispute between the Managing Partner, Chitra Electricals and Allied Industries, P.O. Pattambi and their workmen represented by the Secretary, Palghat District General Workers Union INTUC (I), Regd. No. 3 3/75, Pattambi received by Government on 20-9-1983 is hereby published under section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
K. Sivadasan,
Deputy Secretary to Government.

Before the Court of the Industrial Tribunal, Calicut

(Tuesday, the 6th day of September, nineteen hundred and eighty three)

Present:

Shri K.P. DEVADAS, B. A., B. L.,
Industrial Tribunal, Calicut

INDUSTRIAL DISPUTE No. 5/83

Between

The Managing Partner, Chitra Electricals & Allied Industries, P.O. Pattambi.

And

The Secretary, Palghat District General Workers Union INTUC (I), Regd. No. 333/75, Pattambi.

AWARD

This is an Industrial dispute referred to this Tribunal for adjudication by Government of Kerala as per Order No. G. O. Rt. 525/83/LBR dated 16-5-1983. The issue referred is the following:

Quantum of bonus payable to the workmen of Chitra Electricals & Allied Industries, Pattambi for the year 1981-82.

Pursuant to notice both parties appeared and time was given to file the union statement. Subsequent to this on 25-8-1983 when the case was called both parties were absent. Therefore, in the circumstances of the case I find that the parties are not interested in the case. The reference is answered accordingly.

K.P. DEVADAS,
Industrial Tribunal, Calicut.

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 15653 Leg. Pbn. 2/83/Law. *Dated, Trivandrum,* 11*th October* 1983.

The following Act of Parliament, published in the Gazette of India Extraordinary, Part II, Section 1, dated the 18th May, 1983, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 18th May, 1983.

By order of the Governor,
K. VISWANATHAN NAIR,
Law Secretary.

THE MERCHANT SHIPPING (AMENDMENT) Act, 1983

(Central Act 12 of 1983)

AN

ACT

further to amend the Merchant Shipping Act, 1958

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Merchant Shipping (Amendment) Act, 1983.

2. *Substitution of new section for section* 2.—For section 2 of the Merchant Shipping Act, 1958 (44 of 1958) (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

"2. *Application of Act.*—(1) Unless otherwise expressly provided, the provisions of this Act which apply to.—

(*a*) any vessel which is registered in India; or

(*b*) any vessel which is required by this Act to be so registered; or

(*c*) any other vessel which is owned wholly by persons to each of whom any of the descriptions specified in clause (*a*) or in clause (*b*) or in clause (*c*), as the case may be, of section 21 applies,

shall so apply wherever the vessel may be.

(2) Unless otherwise expressly provided, the provisions of this Act which apply to vessels other than those referred to in subsection (1) shall so apply only while any such vessel is within India, including the territorial waters thereof ".

3. *Amendment of section* 3.—In section 3 of the principal Act, in clause (37), for the figures letters and words "17th day of June, 1960", the figures, letters and words "1st day of November, 1974" shall be substituted.

4. *Amendment of section* 22.—In section 22 of the principal Act, the following *Explanation* shall be inserted at the end, namely :—

'*Explanation*.—For the purposes of this section, "ship" does not include a fishing vessel.'.

5. *Amendment of section* 74.—In section 74 of the principal Act, for clause (*j*) of subsection (2), the following clause shall be substituted, namely :—

"(*j*) the fees that may be levied for the survey or inspection of any ship for the purposes of registration and the manner in which such fees may be collected;".

6. *Amendment of section* 87.—In section 87 of the principal Act, after clause (*d*), the following clause shall be inserted, namely :—

"(*dd*) fix the fees that may be levied for survey or inspection of a ship for ensuring compliance with the provisions of this Part and provide the manner in which such fees may be collected;".

7. *Amendment of section* 175.—In section 175 of the principal Act, after clause (*e*) of subsection (2) the following clause shall be inserted, namely :—

"(*f*) the fees that may be levied for the survey or inspection of crew spaces and for scrutiny of plans of crew accommodation spaces and the manner in which such fees may be collected;".

8. *Amendment of section* 282.—In section 282 of the principal Act,—

(*a*) in clause (*w*) the word "and" occurring at the end shall be omitted;

(*b*) after clause (*w*), the following clause shall be inserted, namely :—

"(*ww*) the fees that may be levied for the survey or inspection of pilgrim ships with respect to sanitary conditions, provision of stores, medical facilities available on such ships and such other purposes that may be relevant for compliance with the provisions of this Part relating to pilgrim ships and the manner in which such fees may be collected;".

9. *Amendment of section* 344.—In section 344 of the principal Act, after clause (*c*) of sub-section (2), the following clause shall be inserted, namely:—

"(*d*) the fees to be charged for the survey or inspection of hull, machinery, boilers, electrical appliances and other fittings and the materials used for their construction, fire appliances, life saving appliances, radio communications equipment, radar, echo sounding device and gyro compass, or testing or approval of any of the foregoing equipments or materials used for their manufacture, or examination of plans of construction of any part of ship's hull, machinery, electrical appliances and other equipment aforesaid and the manner in which such fees may be recovered.".

10. *Insertion of new Part X B*.—After Part XA of the principal Act, the following Part shall be inserted, namely:—

'PART XB

CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

352G. *Application*—This Part applies to—

(a) every Indian ship wherever it is; and

(b) every foreign ship while it is at a port or place in India or within the territorial waters of India or any marine areas adjacent thereto over which India has, or may hereafter have exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) or any other law for the time being in force.

352H. *Definitions.*—(1) In this Part, unless the context otherwise requires,—

(a) "incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage;

(b) "oil" means any persistent oil such as crude oil, fuel oil, heavy diesel oil, lubricating oil and whale oil, whether carried on board a tanker as cargo or fuel;

(c) "owner" means—

(*i*) the person registered as owner of the ship and includes the operator who for the time being is in charge of the ship and the master of the ship; or

(*ii*) in the absence of registration, the person owning the ship; or

(*iii*) in the case of a tanker owned by a foreign State, the person registered in that State as operator of the ship;

(d) "pollution damage" means loss or damage caused outside the ship by contamination resulting from escape or discharge of oil from that ship, wherever such escape or discharge occurs,

and includes the costs of preventive measures and further loss or damage caused by preventive measures; so, however, that the provisions of clause (a) of subsection (1) of section 352B shall not apply to such loss or damage.

(e) "preventive measures" means any reasonable measures taken by any person after the incident to prevent or minimise pollution damage.

(2) In this Part—

(a) the expression "franc" shall have the same meaning as is assigned to it in clause (b) of section 352; and

(b) the expression "tonnage", shall mean the tonnage of a ship determined in accordance with the provisions of section 352 B and where it is not so determinable, it shall mean forty per cent of the weight in tons of oil cargo the ship is capable of carrying.

352I. *Liability of owner*—(1) Save as otherwise provided in sub-sections (2), (3) and (4), the owner at the time of an incident, or, where the incident consists of a series of occurrences, at the time of first of such occurrences, shall be liable for any pollution damage caused by oil which has escaped or been discharged from the ship as a result of the incident.

(2) No liability for pollution damage shall attach to the owner under sub section (1), if he proves that the pollution damage—

(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) was wholly caused by an act or omission done with intent to cause such damage by any other person; or

(c) was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

(3) Where, with respect to any incident, the owner proves that the pollution damage resulted, either wholly or partially, from an act or omission done, with intent to cause such damage, by the person who suffered damage, or from the negligence of that person, the owner shall be exonerated wholly or, as the case may be, partially, from liability to that person.

(4) Where in any incident, pollution damage results from escape or discharge of oil from two or more ships, the owners of all such ships shall be jointly and severally liable for all such damage which is not reasonably separable.

(5) No claim for pollution damage shall be made against any owner otherwise than in accordance with the provisions of this section.

(6) No claim for pollution damage shall be made against any servant or agent of the owner.

352J. *Limitation of liability*—(1) Save as otherwise provided in subsection (2), the owner may limit his liability under section 352I in respect of any incident to an aggregate amount of—

(a) two thousand francs for each ton of the ship's tonnage, or

(b) two hundred and ten million francs,

whichever is lower.

(2) Where any incident causing pollution damage occurs as a result of the actual fault of the owner, he shall not be entitled to limit his liability under subsection (1)

352K—*Constitution of limitatian fund* (1) (a) Any owner desiring to avail of the benefit of limitation of his liability under sub section (1) of section 352J shall make an application to the High Court for constitution of a limitation fund (hereafter in this Part referred to as fund).

(b) Such fund may be constituted either by depositing the sum with the High Court or by furnishing bank guarantee or such other security as, in the opinion of the High Court, is satisfactory.

(2) (a) The insurer or any other person providing financial security to the owner may apply to the High Court for constitution of the fund under subsection (1) and any fund so constituted shall have the same effect as if it were constituted by the owner.

(b) Such fund may be constituted even in cases where subsection (2) of section 352J applies but in any such event constitution of the fund shall not prejudice the rights of any claimant against the owner for full compensation exceeding the amount deposited or secured in the fund.

(3) The amount in francs to be deposited or secured in the fund under subsection (1) shall be converted in rupees on the basis of official value in rupees of the gold contents of franc on the date of constitution of the fund.

352L. *Acquisition of right for compensation by subrogation,*—(1) Where the owner or any of his servants or agents or any other person providing him insurance or other financial security has, as a result of incident in question, paid any compensation to any claimant, such person shall up to the amount so paid by him, be entitled to acquire by subrogation the rights to which the claimant so compensated would be entitled to.

(2) Where the owner or any other person providing him insurance or other financial security establishes that he may, at a later date, be compelled to pay to any person, in whole or in part, any amount by way of compensation for pollution damage caused by the incident with respect to which he would have been entitled to acquire by subrogation the right of the claimant had the compensation been paid before the fund was distributed, the High Court may order that sufficient amount from the fund may provisionally be

set aside to enable the owner or such other person to enforce his claim against the fund at a later date.

352M. *Consolidation of claim and distribution of fund.*—(1) The High Court shall consolidate all claims against the fund including those arising under section 352L.

(2) Any claim in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise pollution damage shall rank equally with other claims against the fund.

(3) Subject to the provisions of subsection (2) of section 352L, the High Court shall distribute the amount in the fund among all claimants in proportion to their established claims.

352N. *Compulsory insurance or other financial guarantee.*—(1) The owner of every Indian ship which carries 2000 tons or more oil in bulk as cargo shall, in respect of such ship, maintain an insurance or other financial security for an amount equivalent to—

(a) two thousand francs for each ton of ship's tonnage; or

(b) two hundred and ten million francs, whichever is lower.

(2) In respect of every Indian ship which maintains insurance or other financial security under subsection (1), there shall be issued by the Director General a certificate in such form and giving such particulars as may be prescribed.

(3) On an application by the owner or agent of any foreign ship, the Director-General may issue a certificate under subsection (2) in respect of such foreign ship on production of satisfactory evidence relating to maintenance of insurance or other financial security in accordance with the provisions of the International Convention on Civil Liability for Oil Pollution Damage signed at Brussels on the 29th day of November 1969.

(4) For every certificate issued under subsections (2) and (3) there shall be charged such fee as may be prescribed.

352O. *Acceptance of certificates issued outside India.*—Any certificate issued by a competent authority in any country outside India to a ship registered in that country or any certificate issued by a competent authority of any country which is a contracting party to the International Convention on Civil Liability for Oil Pollution Damage signed at Brussels on the 29th day of November, 1969, to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Act.

352P. *Ban on entering or leaving an Indian port without certificate.*—(1) No Indian ship, which has on board 2000 tons or more oil in bulk as cargo shall enter or leave or attempt to enter or leave any port or place in India unless it carries on board a certificate issued under subsection (2) of section 352N or a certificate accepted under section 352O.

(2) No ship other than an Indian ship carrying 2000 tons or more oil in bulk as cargo, wherever registered, shall enter or leave or attempt to enter or leave any port or place in India unless it carries on board a certificate

issued under sub-section (3) of section 352N or a certificate accepted under section 352O.

(3) No customs officer shall grant inward entry or outward clearance to any ship to which subsection (1) or, as the case may be, subsection (2) applies unless its master produces a certificate required under the respective subsection.

352Q. *Government ships.*—Nothing in this part shall apply to any ship of war or any ship for the time being used by the Government of any country for purposes other than commercial purposes.

352R. *Power to make rules.*—The Central Government may make rules prescribing—

(a) the form of certificate to be issued by the Director-General under subsection (2) of section 352N and the particulars which it may contain;

(b) fees which may be charged for issue of certificates under section 352N.'.

11. *Substitution of new Part for Part XIA.*—For Part XIA of the principal Act, the following Part shall be substituted, namely:—

'PART XIA

PREVENTION AND CONTAINMENT OF POLLUTION OF THE SEA BY OIL

356A. *Commencement and application.*—(1) The provisions of this Part shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Part.

(2) This Part shall apply to—

(a) tankers of one hundred and fifty tons gross or more;

(b) Other ships of five hundred tons gross or more; and

(c) off-shore installations.

356B. *Definitions.*—In this Part, unless the context otherwise requires,—

(*a*) "cargo" includes ballast and ship's stores and fuel;

(*b*) "coaast" includes any island forming part of India;

(*c*) "costal waters" means any part of the territorial waters of India, or any marine areas adjacent thereto over which India has, or, may hereafter have exclusive jurisdiction in regard to control of marine pollution under the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) or any other law for the time being in force;

(*d*) "Convention" means the International Convention for the prevention of pollution of the Sea by Oil, 1954, signed in London on the 12th day of May, 1954, as amended from time to time;

(e) "discharge", in relation to oil or oily mixture, means any discharge or escape, however caused;

(f) the expression "from nearest land" shall mean the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958, except that in relation to north-eastern coast of Australia it shall mean from a line drawn from a point on the coast of Australia in latitude 11° South, longitude 142°08′ East to a point in latitude 10°35′ South, longitude 141°55′ East—

thence to a point latitude 10°00′ South, longitude 142°00′ East

thence to a point latitude 9°10′ South, longitude 143°52′ East

thence to a point latitude 9°00′ South, longitude 144°30′ East

thence to a point latitude 13°00′ South, longitude 144°00′ East

thence to a point latitude 15°00′ South, longitude 146°00′ East

thence to a point latitude 18°00′ South, longitude 147°00′ East

thence to a point latitude 21°00′ South, longitude 153°00′ East

thence to a point on the coast of Australia in latitude 24°42′ South, longitude 153°15′ East;

(g) "instantaneous rate of discharge of oil content" means the rate of discharge of oil in litres per hour at any instant divided by the speed of the ship in knots at the same instant;

(h) "mile" means a nautical mile of 1,852 metres;

(i) "off shore installation" means an installation, whether mobile or fixed, which is used or is intended to be used for under water exploration or exploitation of crude oil, petroleum or other similar mineral oils, under lease, licence or any other form of contractual arrangement and includes—

(a) any installation which could be moved from place to place under its own motive power or otherwise; and

(b) a pipe-line;

(j) "oil" means—

(i) crude oil;

(ii) fuel oil;

(iii) heavy diesel oil conforming to such specifications as may be prescribed; and

(iv) lubricating oil;

(k) "oily mixture" means a mixture with any oil content;

(l) "oil reception facilities" in relation to a port, means facilities for enabling vessels using the port to discharge or deposit oil residues;

(m) "ship" means any sea-going vessel of any type whatsoever, including a floating craft, whether self-propelled or towed by another vessel, making a sea voyage;

(n) "tanker" means a ship in which greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not, for the time being, carrying a cargo other than oil in that part of its cargo space.

PROVISIONS FOR PREVENTION OF POLLUTION

356C. *Prohibitions as to discharge of oil or oily mixture.*—(1) No oil or oily mixture shall be discharged from an Indian tanker anywhere into the sea or from a foreign tanker anywhere within the coastal waters of India except where each of the following conditions is satisfied, namely:—

(a) the tanker is proceeding en-route;

(b) the instantaneous rate of discharge of oil content does not exceed sixty litres per mile;

(c) the total quantity of oil discharged does not exceed 1/15,000 part of the total carrying capacity of the tanker;

(d) the tanker is more than 50 miles from nearest land; and

(e) the tanker is not within the designated areas notified as such under sub-section (6) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976).

Provided that the provision of this sub-section shall not apply to—

(i) the discharge of ballast from a cargo tank which, since the cargo was last carried therein, has been so cleaned that any affluent therefrom would, if discharged from a stationary tanker into clean calm waters on a clear day, produce no visible traces of oil on the surface of the water; or

(ii) the discharge of oil or oily mixture from machinery space bilges, if any such discharge in made in compliance with the provisions of subsection (2) as if it were made from a ship other than a tanker.

(2) No oil or oily mixture shall be discharged from an Indian ship other than a tanker anywhere into the sea or from a foreign ship other than a tanker within the coastal waters of India except were each of the following conditions is satisfied, namely:—

(a) the ship is proceeding en-route ;

(b) the instantaneous rate of discharge of oil content does not exceed sixty litres per mile ;

(c) the oil content of the discharge is less than one hundred parts per million parts of the oily mixture ;

(d) the discharge is made as far from nearest land as practicable ; and

(e) the ship is not within the designated areas notified as such under subsection (6) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976).

(3) The discharge of oil or oily mixture into the sea from any off-shore installation is hereby prohibited.

356D. *Prohibition not to apply in certain cases.*—Nothing in section 356C shall apply to—

(a) the discharge of oil or oily mixture from a ship or an off-shore installation for the purpose of—

(i) safety of such ship or off-shore installation ; or

(ii) preventing damage to such ship or off-shore installation or cargo, if any, on board such ship or off-shore installation ; or

(iii) saving life at sea ;

(b) the escape of oil or oily mixture resulting from damage to or unavoidable leakage from a ship or an off-shore installation if, after occurrence of the leakage, all reasonable precautions have been taken for the purpose of preventing or minimising such escape ;

(c) the discharge of oily mixture from the bilges of a ship during the period of twelve months following the date on which this section comes into force.

356E. *Equipment in ships to prevent oil pollution.*—For the purpose of preventing or reducing discharges of oil and oily mixtures into the sea, the Central Government may make rules requiring Indian ships to be fitted with such equipment and to comply with such other requirement (including requirements for preventing the escape of fuel oil or crude oil or heavy diesel oil into bilges) as may be prescribed.

356F. *Oil record book.*—(1) Every Indian tanker and every other Indian ship which uses oil as fuel shall maintain on board the tanker or such other ship an oil record book in the prescribed form :

Provided that different forms may be prescribed for tankers and other ships.

(2) The manner in which the oil record book shall be maintained, the nature of entries to be made therein, the time and circumstances in which such entries shall be made the custody and disposal thereof, and all other matters relating thereto shall be such as may be prescribed having regard to the provisions of the Convention.

356G. *Inspection and control of ships to which the Convention applies.*—(1) A surveyor or any person authorised in this behalf may, at any reasonable time, go on board a ship to which any of the provisions of this Part applies, for the purposes of—

(*a*) ensuring that the prohibitions, restrictions and obligations imposed by or under this Part are complied with;

(*b*) satisfying himself about the adequacy of the measures taken to prevent the escape of oil or oily mixture from the ship;

(*c*) ascertaining the circumstances relating to an alleged discharge of oil or oily mixture from the ship in contravention of the provisions of this Part; and

(*d*) inspecting the oil record book.

(2) The surveyor or any such person may, if necessary, make, without unduly delaying the ship, a true copy of any entry in the oil record book of the ship and may require the master of the ship to certify the copy to be a true copy and such copy shall be admissible as evidence of the facts stated therein.

356H. *Information regarding contravention of the provisions of the Convention.*—(1) If, on report from a surveyor or other persons authorised to inspect a vessel under section 356G, the Central Government is satisfied that any provision of the Convention has been contravened anywhere by a foreign ship, being a ship to which the provisions of the Convention apply, it shall transmit particulars of the alleged contravention to the Government of the country to which the ship belongs.

(2) On receipt of information from the Government of any country which has ratified the Convention that an Indian ship has contravened any provisions of the Convention the Central Government may, if it deems it necessary so to do, request such Government to furnish further details of the alleged contravention, and if satisfied that sufficient evidence is available to establish contravention of any of the provisions of this Part or rules made thereunder, take appropriate action against the owner or master and intimate the reporting Government of the action so taken.

356I. *Oil reception facilities at ports in India* (1) Notwithstanding anything contained in any other law for the time being in force, in respect of every port in India, the powers of the port authority shall include the power to provide oil reception facilities.

(2) A port authority providing oil reception facilities or a person providing such facilities by arrangement with the port authority, may make charges for the use of the facilities at such rates and may impose such conditions in respect of the use thereof as may be approved, by notification in the Official Gazette, by the Central Government in respect of the port.

(3) Where the Central Government is satisfied that there are no oil reception facilities at any port in India or that the facilities available at such

port are not adequate for enabling ships calling at such port to comply with the requirements of the Convention, the Central Government may, after consultation with the port authority in charge of such port, direct, by order in writing, such authority to provide or arrange for the provision of such oil reception facilities as may be specified in the order.

(4) The Central Government may, by notification in the Official Gazette, specify the ports in India having oil reception facilities in accordance with the requirements of the Convention.

Explanation.—For the purpose of this section, "port authority" means,—

(a) in relation to any major port, the Board of Trustees in respect of that port constituted under any law for the time being in force

(b) in relation to any other port, the Conservator of the Port, within the meaning of section 7 of the Indian Ports Act, 1908 (15 of 1908).

PROVISIONS FOR CONTAINMENT OF ACCIDENTAL POLLUTION

356J. *Power to give notice to owner etc., of polluting ship.*—(1) Where the Central Government is satisfied that—

(a) oil is escaping or is likely to escape from a tanker, a ship other than a tanker or any off-shore installation; and

(b) the oil so escaped or likely to escape is causing or threatens to cause pollution of any part of coasts or coastal waters of India,

it may, for the purpose of minimising the pollution already caused, or, for preventing the pollution threatened to be caused, require—

(i) the owner, agent master or charterer of the tanker,

(ii) the owner, agent, master or charterer of the ship other than a tanker,

(iii) the owner, agent, master, charterer or operator of a mobile off-shore installation,

(iv) the owner operator, lessee or licensee of off-shore installation of any other type,

or all or any of them, by notice served on him or as the case may be on them, to take such action in relation to the tanker, ship other than a tanker, mobile off-shore installation or, as the case may be, off-shore installation of any other type or its cargo or in relation to both, as may be specified in such notice.

(2) Without prejudice to the generality of subsection (1), the notice issued under that subsection may require the person or persons on whom such notice is served to take action relating to any or all of the following matters namely:—

(a) action for preventing the escape of oil from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type;

(b) action for removing oil from the tanker, ship other than a tanker mobile off-shore installation or off-shore installation of any other type in such manner, if any, and to such place, if any, as may be specified in the notice;

(c) action for removal of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type to a place, if any, as may be specified in the notice;

(d) action for removal of the oil slicks on the surface of the sea in such manner, if any, as may be specified in the notice;

(e) action to disperse the oil slicks on the surface of the sea in such manner, if any, as may be specified in the notice.

(3) The Central Government may, by any notice issued under sub-section (1), prohibit the removal—

(a) of the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, from a place specified in the notice;

(b) from the tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type, of any cargo or stores as may be specified in the notice.

except with its previous permission and upon such conditions, if any, as may be specified in the notice.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is of the opinion that the pollution caused or likely to be caused has or may present a grave emergency, proceed to take such measures as may be deemed necessary and any measures so taken shall be deemed to have been taken under section 356 K.

356K. *Powers to take measures for preventing or containing oil pollution.* (1) Where any person fails to comply, or fails to comply in part, with any notice served on him under section 356 J, the Central Government may, whether or not such person is convicted of an offence under this Part by reason of his having so failed to comply, cause such action to be taken as it may deem necessary for—

(i) carrying out the directives given in the notice issued under section 356 J; and

(ii) containing the pollution already caused or preventing the pollution threatened to be caused, of coastal waters or, as the case may be, of any part of the coast of India by oil escaped or threatening to escape from the tanker, a ship other than a tanker, a mobile off-shore installation or off-shore installation of any other type.

(2) Subject to the provisions of Part XB, any expenditure or liability incurred by the Central Government in, or by reason of, the exercise of powers under sub-section (1) in relation to any tanker, ship, other than a tanker, mobile off-shore installation or off-shore installation of any other type in respect of which a notice had been issued under section 356J, or its

cargo of oil that had escaped or was discharged into the sea, shall be a debt due to the Central Government by the person or persons on whom the notice was served and may be recovered from that person, or as the case may be, from all or any of those persons and shall be a charge upon all or any tanker, ship other than a tanker, mobile off-shore installation or off-shore installation of any other type owned by that person or persons which may be detained by the Central Government until the amount is paid:

Provided that provisions of Part XB of this Act shall not apply to measures taken in respect of any off-shore installation which is not a ship within the meaning of this Act except that in the event of pollution damage caused by any such off-shore installation the person who is liable for the damage may claim exoneration from any liability if he proves that such damage—

(*a*) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(*b*) was wholly caused by an act or omission done with intent to cause that damage by any other person; or

(*c*) was wholly caused by the negligence or other wrongfull act of any government or other authority responsible for the maintenance of lights or other navigational aids in exercise of its functions in that behalf.

356L. *Power of the Central Government to give directions to certain ships to render certain services.*—(1) Where for the purposes of taking any measures under sub section (1) of section 356K, services of any Indian ship become necessary for—

(i) lightening or transporting any cargo or equipment from or to the polluting ship; or

(ii) providing any assistance to any other ship or equipment engaged in rendering services under clause (i),

the Central Government may, if it deems it necessary so to do, direct, by an order in writing, the owner of any Indian ship, tug, barge or any other equipment to provide such services or assistance as may be specified in that order.

(2) The owner of any ship, tug, barge or any other equipment with respect to which an order under sub-section (1) has been made shall be entitled to tariff rates of freight and charter hire at reasonable rates having regard to current market conditions:

Provided that where tariff rates of freight are not fixed or where there is any dispute about reasonable rate of charter hire, the freight or, as the case may be charter hire shall be paid at such rates as may be fixed by the Director-General by an order in writing.

(3) Where in pursuance of the proviso to sub-section (2), the Director-General makes any order fixing rates of freight or charter hire, he shall

determine reasonability of such rates of freight or charter hire by examining such witnesses, documents and accounts as he may deem necessary.

356M. *Oil pollution cess.*—(1) With effect from such date as the Central Government may, by notification in the Official Gazette, specify, there shall be levied on every ship calling at any port in India being a ship which carries oil as cargo, a cess to be called Oil Pollution Cess (hereafter in this Part referred to as cess) at such rate not exceeding fifty paise,—

(a) in respect of each tonne of oil imported by a ship into India in bulk as a cargo;

(b) in respect of each tonne of oil shipped from any place in India in bulk as a cargo of a ship,

as the Central Government may, by notification in the Official Gazette, fix:

Provided that no cess shall be levied on a ship at any port if the ship produces evidence of having paid such levy at the same or any other port in India within a period of three months immediately preceding its present call at the port.

(2) The cess shall be collected by such officers and in such manner as the Central Government may prescribe in this behalf and shall, after deduction of such costs of collection, if any as the Central Government may determine be paid to such authority as the Central Government may specify.

(3) The proceeds of the cess shall, after due appropriation made by Parliament by law, be utilised for the purpose of providing oil reception facilities and equipments and materials for combating oil pollution at various ports in India and for such other like purposes as the Central Government may, by notification in the Official Gazette from time to time, specify.

356N. *Refusal of port clearance.*—The officer whose duty it is to grant a port clearance for any ship shall not grant the port clearance until the amount of cess payable under section 356M has been paid or until security for the payment thereof has been given to his satisfaction.

356O. *Power to make rules.*—(1) The Central Government may, having regard to the provisions of the Convention, make rules to carry out the purposes of this Part.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may—

(a) prescribe the specifications of heavy diesel oil for the purposes of sub-clause (iii) of clause (j) of section 356B;

(b) prescribe the equipment to be fitted in Indian ships and other requirements to be complied with by those ships for the purposes of section 356E;

(c) prescribe the forms of oil record books for tankers and other ships, the manner in which such books shall be maintained, the nature of the entries to be made therein, the time and circumstances in which such entries shall be made, the custody and disposal thereof and all other matters relating thereto for the purposes of section 356F;

(d) prescribe the fees which may be levied for inspection of oil monitoring system, oily water separator, oil content metre, crude oil washing system, inert gas system or other equipments or contrivances carried out on board for preventing pollution of the sea by oil and the manner in which such fees may be collected;

(e) specify the officers who shall collect the cess and the manner in which the cess shall be collected.'

12. *Insertion of new section* 411A.—After section 411 of the principal Act the following section shall be inserted, namely:—

"411A. *Powers of the Central Government to protect intrests of Indian shipping from undue foreign intervention.*—(1) If it appears to the Central Government—

(a) that measures have been taken by or under the law of any foreign country for regulating or controlling the terms or conditions upon which goods or passengers may be carried by sea, or the terms or conditions of contracts of arrangements relating to such carriage; and

(b) that such measures, in so far as they apply to things done or to be done outside the territorial jurisdiction of that country by persons carrying on lawful business in India, constitute an infringement of the jurisdiction which belongs to India, it may, by an order in writing, direct that this section shall apply to those measures either in whole or to such extent as may be specified in the order.

(2) Where an order issued under sub-section (1) is in force in relation to any measures, it shall be the duty of every person in India who carries on business consisting or comprising of the carriage of goods or passengers by sea to give notice to the Central Government of any requirement or prohibition imposed or threatened to be imposed on him pursuant to such measures so far as this section applies to him, including any requirement to submit any contract or other document for approval thereunder.

(3) Where a notice under sub-section (2) is received from any person or there are grounds to believe that a notice is likely to be received, the Central Government may, by an order in writing, give to such person directions prohibiting compliance with any such requirement or prohibition as it considers proper for maintaining the jurisdiction of India.

(4) Any directions given by the Central Government under sub-section (3) may be either general or special and may prohibit compliance with any requirement or prohibition either absolutely or in such cases or subject to such conditions, as to consent or otherwise as may be specified in the order.

(5) If it appears to the Central Government that any person in India has been or may be required to produce or furnish to any court, tribunal or authority of a foreign country any commercial document which is not within the territorial jurisdiction of that country or any commercial information to be compiled from documents not within the territorial jurisdiction of that

country and that the requirement constitutes or would constitute an infringement of the jurisdiction which belongs to India, the Central Government may, by an order in writing, give directions to that person, prohibiting him from complying with the requirement except to such extent or subject to such conditions as may be specified in the order.".

13. *Amendment of Action* 417—In section 417 of the principal Act, in subsection (1), after the words "sailing vessel", the brackets and words "(other than a sailing vessel solely engaged in fishing for profit)" shall be inserted.

14. *Amendment of section* 435—In section 435 of the principal Act, for clause (o) of subsection (2), the following clause shall be substituted, namely:—

"(O) the fees which may be levied for the issue or re-issue of certificates of registry, for the survey or inspection of sailing vessels before issue of such certificates, for the inspection of sailing vessels and for all other purposes of this Part and the manner in which such fees may be recovered;".

15. *Insertion of new Part* XVA.—After Part XV of the principal Act, the following Part shall be inserted, namely:—

'PART XVA

FISHING BOATS

435A. *Application of Part.*—Save as otherwise provided, this Part applies to every Indian fishing boat.

435B. *Definition.*—For the purposes of this Part, "Indian fishing boat" means—

(a) every fishing vessel, as defined in clause (12) of section 3;

(b) every sailing vessel, whether or not fitted with mechanical means of propulsion, solely engaged in fishing for profit;

(c) every boat or craft of any other type used solely for fishing which the Central Government may, by notification in the Official Gazette, specify to be a fishing boat for the purposes of this section,

which is owned wholly by persons to each of whom any of the discriptions specified in clause (a) or in clause (b) or in clause (c), as the case may be, of section 21 applies or which satisfies such other requirements as the Central Government may, by notification in the Official Gazette, specify.

435C. *Obligation to register.*—Every Indian fishing boat shall be registered under this part:

Provided that any Indian fishing boat registered at the commencement of this Part under Part V or Part XV of this Act or any other law for the time being in force in India shall be deemed to have been registered under this Part.

Provided further that every Indian fishing boat so deemed to have been registered shall be re-registered under this Part within such period from the commencement of this part as the Central Government may, by notification in the Official Gazette, specify:

Provided also that registration of non-mechanised sailing vessels will commence in different ports on such dates as the Central Government may, by notification in the official Gazette, specify.

435D. *Port of registry.*—(1) The ports at which registration of Indian fishing boats shall be made shall be such ports or places in India as the Central Government may, by notification in the Official Gazette, declare to be ports or places of registry under this Part.

(2) The port or place at which an Indian fishing boat is registered for the time being under this Part, shall be deemed to be her port or place of registry and the port or place to which she belongs.

435E. *Registrars of Indian fishing boats.*—The Central Government may, by notification in the Official Gazette, appoint an officer to be registrar of Indian fishing boats (hereafter in this Part referred to as registrar) at every port or place declared as a port or place of registry under subsection (1) of section 435D.

435F. *Application for registry.*—An application for the registry of an Indian fishing boat shall be made—

(a) in the case of an individual, by the person requiring to be registered as owner or by his agent;

(b) in the case of more than one individual requiring to be so registered, by one or more of the persons so requiring or by his or their agent or agents, as the case may be; and

(c) in the case of a company or a co-operative society requiring to be so registered, by its agents;

and the authority of the agent shall be testified in writing, if appointed by an individual under the hand of the person appointing him and, if appointed by a company or a co-operative society under its common seal.

435G. *Certificate of registry.*—(1) The owner of every Indian fishing boat required to be registered under this Part shall make an application in the prescribed form to the registrar for the grant to him of a certificate of registry in respect of the fishing boat.

(2) The owner of every Indian fishing boat in respect of which an application under subsection (1) is made, shall cause the tonnage of the fishing boat to be ascertained in the prescribed manner.

(3) The registrar may make such inquiry as he thinks fit with respect to the particulars contained in such application and shall enter in a register to be kept for the purpose (hereinafter referred to as fishing boats register) the following particulars in respect of the Indian fishing boat, namely:—

(a) the name of the fishing boat, the place where she was built and the port to which she belongs;

(*b*) the rig, type and tonnage of the fishing boat;

c) the number assigned to the fishing boat;

(*d*) the name, occupation and residence of the owner of the fishing boat;

(*e*) the mortgages, if any, effected by the owner in respect of the fishing boat; and

(*f*) such other particulars as may be prescribed.

(*4*) After the particulars in respect of the Indian fishing boat have been entered in the fishing boats register under subsection (3), the registrar shall grant to the applicant a certificate of registry in prescribed form.

(5) The owner of every Indian fishing boat shall pay for each certificate of registry a fee according to such scale as may be prescribed by the Central Government having regard to the tonnage of the fishing boat, but in no case exceeding one rupee per ton of its gross tonnage.

(6) An Indian fishing boat required to be registered under this Part but not so registered may be detained by a proper officer until the owner, skipper, tindal or other person in charge of the fishing boat produces a certificate of registry in respect of the fishing boat.

435H. *Particulars relating to Indian fishing boats to be painted:*— The owner of every Indian fishing boat so registered shall, before commissioning the fishing boat into service, paint or cause to be painted permanently in the prescribed manner on some conspicuous part of the fishing boat, the name by which the fishing boat has been registered, the number assigned to the fishing boat by the registrar and the port or place to which she belongs, and shall take all steps to ensure that the fishing boat remains painted as required by this section.

435I. *Change of name of Indian fishing boat.*—A change shall not be made in the name of an Indian fishing boat registered under this Part except in accordance with rules made in this behalf.

435J. *Special provision for Indian fishing boats.*—Every Indian fishing boat registered under this Part shall carry on board such life saving appliances and fire appliances as are prescribed by rules made under sections 288, 289 and 457 or under any other provision of this Act, subject to such exemptions as may be specially granted in respect of such fishing boat.

435K. *Certificate of inspection.*—(1) No Indian fishing boat shall ply or proceed to see unless there is in force in respect of that fishing boat a certificate of inspection granted under this Part.

(2) A certificate of inspection in respect of an Indian fishing boat shall specify—

(a) the name and tonnage of the fishing boat;

(b) the name of skipper, tindal or other person in charge of the fishing boat;

(c) the maximum number of members of crew the fishing boat is certified to carry;

(d) the safety equipments and appliances the fishing boat is required to carry on board;

(e) such other matters as the Central Government may think fit to specify,

and shall contain a statement to the effect that her hull, rigging, equipment and machinery where fitted are in good condition.

(3) Every certificate of inspection shall be in force from the date of issue for a period of one year or for such shorter period as may be specified therein:

Provided that when an Indian fishing boat is at sea at the time of expiry of the certificate, the certificate shall continue to be valid until her first arrival at a port or place in India.

435L. *Cancellation, reissue, etc., of certificate of inspection.* (1) Where at any time subsequent to the issue of a certificate of inspection in respect of an Indian fishing boat, the registrar has reason to believe that the fishing boat is not fit to proceed to sea, he may, after giving the owner an opportunity of making a representation, cancel such certificate.

(2) Where at any time subseqent to the issue of a certificate of inspection an Indian fishing boat has undergone material alteration or has met with accident or, where the certificate of inspection has been cancelled under subsection (1) and the application is made for the re-issue of such certificate or for the grant of a fresh certificate, the registrar may, before re-issuing the certificate or issuing a fresh certificate, as the case may be, cause such fishing boat to be inspected; and if the authority inspecting the fishing boat reports that she is not fit to proceed to sea or that her hull, rigging of equipment are defective, such certificate shall not be re-issued or issued until the fishing boat is, in the opinion of such authority, fit to proceed to sea or the defect is rectified to the satisfaction of that authority.

435M. *Inspection of safety equipments and appliances.*—(1) Any surveyor appointed under section 9, any registrar appointed under section 435E or any other officer appointed by the Central Government in this behalf by notification in the Official Gazette may at any reasonable time inspect any Indian fishing boat for the purpose of seeing that she is properly provided with safety equipments and appliances in conformity with the rules referred to in section 435J.

(2) If the surveyor, or, as the case may be, the registrar or other officer appointed under subsection (1) finds that the Indian fishing boat is not provided with the aforesaid equipments and appliances, he shall give to the owner, skipper or tindal or any other person in charge of the fishing boat a notice in writing pointing out the deficiency and also what in his opinion is requisite to remedy the said deficiency.

(3) No Indian fishing boat served with a notice under sub-section (2) shall proceed to sea until it obtains a certificate signed by the surveyor, registrar or other officer appointed under sub-section (1) to the effect that it is properly provided with safety equipments and appliances in conformity with the aforesaid rules.

435N. *Registration of alteration.*—When an Indian fishing boat is so altered as not to correspond with the particulars relating to her entered in the certificate of registry, the owner of such fishing boat shall make a report of such alterations to the registrar of the port or place where the fishing boat is registered, and the registrar shall either cause the alterations to be registered, or direct that the fishing boat may be registered anew, in accordance with such rules as may be made in this behalf.

435O. *Transfer of registry.*—The registry of an Indian fishing boat may be transferred from one port or place to another port or place in India on the application of the owner of the fishing boat, in accordance with such rules as may be made in this behalf.

435P. *Closure of registry.*—If an Indian fishing boat is lost, destroyed or rendered permanently unfit for service, the owner of such fishing boat shall, with the least possible delay, report the fact to the registrar of the port or place where the fishing boat is registered and also forward to him certificate of registry in respect of the fishing boat; and thereupon the registrar shall have the registry of the fishing boat closed.

435Q. *Restriction on transfer of Indian fishing boats.*—No person shall transfer of acquire any Indian fishing boat registered under this Part or any interest therein without the previous approval of the Central Government; and any transaction effected in contravention of this section shall be void and unenforceable.

435R. *Mortgage of Indian fishing boats.*—(1) Every mortgage of an Indian fishing boat or any interest therein effected after the date on which this Part comes into force shall be registered with the registrar.

(2) Every mortgage of an Indian fishing boat or any interest therein effected before the date on which this Part comes into force shall, if subsisting on that date, be registered with the registrar within three months from that date.

(3) The registrar shall enter every such mortgage in the fishing boats register in the order in which it is registered with him.

(4) If there are more mortgages than one recorded in respect of the same Indian fishing boat or interest therein, the mortgages shall, notwithstanding any express, implied or constructive notice, have priority according to the date on which each mortgage is registered with the registrar and not according to the date of each mortgage itself:

Provided that nothing contained in this sub-section shall affect the relative priorities as they existed immediately before the date on which this Part comes into force as between mortgages of the same

fishing boat or interest therein effected before such date which are registered in accordance with the provisions of sub-section (2).

435S. *Fraudulent use of certificate of registry or certificate of inspection, etc. prohibited.*—(1) No person shall use or attempt to use the certificate of registry or the certificate of inspection granted in respect of an Indian fishing boat for any purpose other than the lawful operation of that fishing boat.

(2) No person shall use or attempt to use for the operation of an Indian fishing boat, a certificate of registry or a certificate of inspection not granted in respect of that fishing boat.

(3) No person who has in his possession or under his control the certificate of registry or the certificate of inspection of an Indian fishing boat shall refuse or omit without reasonable cause to deliver such certificate on demand to the owner of the fishing boat.

435T. *Statement relating to crew of Indian fishing boat to be maintained.*—(1) Every owner, skipper, tindal or other person in charge of a mechanised Indian fishing boat of 25 registered tons and above shall maintain or cause to be maintained in the prescribed form a statement of the crew of the fishing boat containing the following particulars with respect to each member thereof, namely :—

(a) his name ;
(b) the wages payable to him ;
(c) the names and addresses of his next-of-kin;
(d) the date of commencement of his employment; and
(e) such other particulars as may be prescribed :

Provided that the Central Government may, if it is of opinion that it is necessary or expedient so to do, and for reasons to be recorded in writing, exempt, by general or special order, any Indian fishing boat or class of Indian fishing boats from the provisions of this subsection.

(2) Every change in the crew of the Indian fishing boat shall be entered in the statement under subsection (1).

(3) A copy of such statement and of every change entered therein shall be communicated as soon as possible to the registrar of the port or place of registry of the Indian fishing boat concerned.

435U. *Power to make rules respecting Indian fishing boats.*—(1) The Central Government may make rules to carry out the provisions of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the form in which applications for certificates of registry shall be made and the particulars which such applications should contain;

(b) the manner in which tonnage of an Indian fishing boat shall be ascertained;

(c) the form in which fishing boats register shall be maintained;

(d) the forms in which certificates of registry and certificates of inspection may be issued;

(e) the fees which may be levied for the issue or re-issue of certificates of registry or certificates of inspection and for all other purposes of this Part;

(f) the manner in which the name, number assigned to the Indian fishing boat and name of the port or place to which she belongs shall be painted;

(g) the manner in which any change may be made in the name of an Indian fishing boat;

(h) any exemption from the requirements relating to carriage of safety equipment and appliances by an Indian fishing boat that may be specially granted under section 435J in respect of such fishing boat;

(i) the manner in which alterations in Indian fishing boats shall be reported and applications for the registry of such alterations in the certificates of registry of Indian fishing boats shall be made, the endorsement of the particulars of alterations on the certificates of registry, the grant of provisional certificates in cases where Indian fishing boats are directed to be registered anew, cases in which Indian fishing boats shall be registered anew, the period for which provisional certificates shall be valid and all other matters ancillary to the registry of alterations:

(j) the manner in which registry of an Indian fishing boat may be transferred from one port or place in India to another port or place in India;

(k) the form in which statement of members of crew of an Indian fishing boat may be maintained;

(l) any other matter which has to be or may be prescribed.

435V. *Application to Indian fishing boats of other provisions relating to ships*.—The Central Government may, by notification in the Official Gazette, direct that any provisions of this Act other than those contained in this Part which do not expressly apply to Indian fishing boats shall also apply to Indian fishing boats subject to such conditions, exceptions and modifications as may be specified in the notification.

435W. *Fishery data to be furnished by Indian fishing boats*.—The Central Government may, by notification in the Official Gazette require every Indian fishing boat or any specified class of Indian fishing boats to furnish such fishery data to the registrar in such form and at such periodical intervals as may be specified in that notification.

435X. *Power to exempt*.—Notwithstanding anything contained in this Part, the Central Government may, by order in writing, and upon such conditions as it may think fit to impose, exempt any Indian fishing boat or class of Indian fishing boats or skipper, tindal or member of crew of such fishing boat or class of fishing boats from any

specified requirement contained in or prescribed by any rules made in pursuance of any provision of this Part or from any other requirement of this Act extended to Indian fishing boats or to personnel employed on Indian fishing boats by a notification issued under section 435V, if it is satisfied that the requirement is substantially complied with or the compliance with the requirement may be impracticable or unreasonable in the circumstances attending the case.'.

16. *Amendment of section* 436.—In section 436 of the principal Act, in sub-section (2), in the Table,—

(i) against Serial Number 100, in the fourth column, for the words "one thousand rupees", the words "five thousand rupees" shall be substituted;

(ii) for Serial Numbers 115B, 115C and 115D and the entries relating thereto, the following shall be substituted, namely:—

1	2	3	4
"115 B	(a) If oil or oily mixture is discharged in contravention of sub-section (1) of section 356C—		
	(i) Where such discharge is made from an Indian tanker anywhere into the sea;	356C (1)	The master of the tanker shall be liable to fine which may extend to five lakh rupees.
	(ii) Where such discharge is made from a foreign tanker anywhere within the coastal water of India.	356C (1)	The master of the tanker, or if the tanker is unmanned, the person in charge of its operation shall be liable to fine which may extend to five lakh rupees.
	(b) If oil or oily mixture is discharged in contravention of sub-section (2) of section 356C—		
	(i) Where such discharge is made by an Indian ship other than a tanker any where into the sea;	356C (2)	The master of the ship shall be liable to fine which may extend to five lakh rupees.

(1)	(2)	(3)	(4)
(ii)	where such discharge is made by a foreign ship other than a tanker anywhere within the coastal waters of India.	356C (2)	The master, or if the ship is unmanned, the person in charge of its operation shall be liable to fine which may extend to five lakh rupees.
(c)	If oil or oily mixture is discharged in contravention of sub-section (3) of section 356C.	356C (3)	The master of the off-shore installation if it be a mobile craft or the owner, operator, lessee or licensee of an off-shore installation of any other type shall be liable to fine which may extend to five lakh rupees.
115C	If an Indian ship is not fitted with equipment prescribed under section 356E.	356E	The owner, master or agent of the Indian ship shall be liable to fine which may extend to ten thousand rupees.
115D (i)	If the master of an Indian tanker or other Indian ship fails to maintain an oil record book as required by section 356F or contravenes any rule made under that section;	356F	The master of the Indian tanker or other Indian ship shall be liable to fine which may extend to five thousand rupees.
(ii)	If any person wilfully destroys or mutilates or renders illegible or prevents the making of, any entry in the oil record book or makes or causes to be made a false entry in such book in contravention of any rule made under section 356F.	356F	The offender shall be liable to penalty of imprisonment which may extend to six months or fine which may extend to ten thousand rupees or both.

(1)	(2)	(3)	(4)
115E	If master of any ship refuses to certify copy of any entry in the oil record book to be a true copy of such entry as required under sub-section (2) of section 356G.	356G (2)	The master of the ship shall be liable to fine which may extend to one thousand rupees.
115F	If any person fails to take action as required by a notice served on him under sub-section (1) of section 356 J.	356 J (1)	The offender shall be liable to penalty of imprisonment which may extend to six months or fine which may extend to ten lakh rupees or both.
115G	If owner of any Indian ship, tug, barge or any other equipment fails to comply with any order issued under sub-section (1) of section 356L.	356L (1)	The offender shall be liable to penalty of imprisonment which may extend to six months or fine which may extend to one lakh rupees, or both and if the offence is a continuing one the offender shall be liable to a further fine which may extend to ten thousand rupees per day for every day during which the offence continues after conviction.";

(iii) after Serial Number 137 and the entries relating thereto, the following shall be inserted, namely:—

(1)	(2)	(3)	(4)
"137A	If an Indian fishing boat required to be registered under section 435C is not registered in accordance with the provisions of that section.	435C	The owner shall be liable to fine which may extend to one thousand rupees.

(1)	(2)	(3)	(4)
137B	If the owner of an Indian fishing boat fails to comply with the provisions of section 435H.	435H	The owner shall be liable to fine which may extend to two hundred rupees.
137C	If provisions of section 435 I are contravened.	435 I	The owner shall be liable to fine which may extend to two hundred rupees.
137D	If provisions of section 435 J are contravened.	435 J	The owner, skipper, tindal or any other person in charge of the Indian fishing boat shall be liable to fine which may extend to one thousand rupees and in addition to fine which may extend to fifty rupees for every day during which the offence continues after conviction.
137E	If provisions of section 435K are contravened.	435K	The owner, skipper, tindal or any other person in charge of the Indian fishing boat shall be liable to fine which may extend to one thousand rupees and in addition to fine which may extend to fifty rupees for every day during which the offence continues after conviction.
137F	If provisions of section 435M are contravened.	435M	The owner shall be liable to fine which may extend to one thousand rupees and in addition to fine which may extend to fifty rupees for every day during which the offence continues after conviction.

(1)	(2)	(3)	(4)
137G	If provisions of section 435N are contravened.	435N	The owner shall be liable to fine which may extend to two hundred rupees and in addition to fine which may extend to twenty rupees for every day during which the offence continues after conviction.
137H	If provisions of section 435P are contravened	435P	The owner shall be liable to fine which may extend to two hundred rupees.
137I	If any person contravenes the provisions of section 435Q	435Q	The offender shall be liable to fine which may extend to five hundred rupees.
137J	If any person contravenes the provisions of section 435S.	435S	The offender shall be liable to imprisonment which may extend to three months or fine which may extend to two hundred rupees, or both.
137K	If provisions of section 435T are contravened.	435T	The owner, skipper, tindal or any other person in charge of the Indian fishing boat shall be liable to fine which may extend to two hundred rupees.".

17. *Amendments relating to references to Act* 5 *of* 1898.—The amendments directed in the Schedule (being amendments for substituting for the references in the principal Act to the provisions of, and authorities under, the Code of Criminal Procedure, 1898, references to the corresponding provisions of, and authorities under, the Code of Criminal Procedure, 1973) (2 of 1974) shall be made in the principal Act.

THE SCHEDULE

(*See* section 17)

AMENDMENTS TO THE MERCHANT SHIPPING ACT., 1958 (44 OF 1958)

1. In section 35 of the principal Act, in sub-section (3) for the word "any magistrate of the first class" and "the magistrate", the words "any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be," and "the said Magistrate" shall, respectively, be substituted.

2. In section 132 of the principal Act, in sub-section (3), for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.

3. In section 145 of the principal Act, in sub-section (1),—

(a) for the words "any magistrate", the words "any Judicial Magistrate of the first class or any Metropolitan Magistrate, as the case may be," shall be substituted;

(b) for the words "the magistrate" at both the places where they occur, the words "such Magistrate" shall be substituted.

4. In section 146 of the principal Act, in clause (c) for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.

5. In section 184 of the principal Act, for the words "a magistrate" at both the places where they occur, the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.

6. In section 187 of the principal Act, in sub-section (2), for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.

7. In section 189 of the principal Act, for the words "a magistrate", the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted

8. In section 233 of the principal Act, in sub-section (3), for the words "nearest magistrate", the words "nearest Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be," shall be substituted.

9. In section 279 of the principal Act, in sub-section (4), for the words " presidency magistrate or a magistrate of the first class", the words "Metropolitan Magistrate or a Judicial Magistrate of the first class" shall be substituted.

10. In section 282 of the principal Act, in clause (s), for the word "magistrates", the words "Metropolitan Magistrate or Judicial Magistrates of the first class, as the case may be," shall be substituted.

11. In section 361 of the principal Act, for the words "A magistrate of the first class" and "presidency magistrate", the words "A Judicial Magistrate of the first class" and "Metropolitan Magistrate" shall, respectively, be substituted.

12. In section 372 of the principal Act,—

(a) in sub-section (1), for the words "magistrate of the first class" and "presidency magistrate", the words "Judicial Magistrate of the first class" and "Metropolitan Magistrate" shall respectively, be substituted;

(b) in sub-section (3), for the word "magistrate", the words "Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be," shall be substituted;

(c) in sub-section (4), for the word "magistrate", the words "Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be," shall be substituted.

13. In section 383 of the principal Act, in sub-section (2), for the words "presidency magistrate, magistrate of the first class", the words "Metropolitan Magistrate, Judicial Magistrate of the first class" shall be substituted.

14. In section 401 of the principal Act, for the word "magistrate", the words "Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be," shall be substituted.

15. In section 402 of the principal Act,—

(a) in sub-section (4), in clause (a), for the word "magistrate" the words "Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted;

(b) in sub-section (5), for the words "the magistrate or the High Court, as the case may be," and "the magistrate", the words "the Judicial Magistrate of the first class or the Metropolitan Magistrate or the High Court, as the case may be," and "such magistrate" shall, respectively, be substituted;

(c) in sub-section (6), for the words "a magistrate" and "the magistrate", wherever they occur, the words "a Judicial Magistrate of the first class or a Metropolitan Magistrate" and "such magistrate" shall, respectively, be substituted.

16. In section 439 of the principal Act, for the words "presidency magistrate or a magistrate of the first class", the words "Metropolitan Magistrate or a Judicial Magistrate of the first class" shall be substituted.

17. In section 440 of the principal Act,—

(a) for the words and figures "section 32 of the Code of Criminal Procedure, 1898 (5 of 1898)", the words and figures "section 29 of the Code of Criminal Procedure, 1973 (2 of 1974)" shall be substituted;

(b) for the words "presidency magistrate or a magistrate of the first class", the words "Metropolitan Magistrate or a Judicial Magistrate of the first class" shall be substituted.

18. In section 442 of the principal Act, in sub-section (1),—

(a) for the words "court or magistrate", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted;

(b) for the words "court, magistrate", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted;

(c) for the words, " Justice or magistrate", the words "or Justice or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted;

(d) for the words "Justice, Magistrate", the words "Justice or Judicial Magistrate of the first class or Metropolitan Magistrate" shall be substituted.

19. In section 445 of the principal Act,—

(a) in sub-section (1), for the words "court, magistrate" and "a magistrate", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate" and "such a magistrate" shall, respectively, be substituted;

(b) in sub-section (2), for the words "court, magistrate or other officer" and " court, magistrate, officer", the words "court or Judicial Magistrate of the first class or Metropolitan Magistrate or other officer" and "Court or Judicial Magistrate of the first class or Metropolitan Magistrate or officer" shall, respectively be substituted.

20. In section 447 of the principal Act, for the words "A magistrate", the words "A Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be," shall be substituted.

GOVERNMENT OF KERALA

Law (Legislation-Publication) Department

NOTIFICATION

No. 15654-1/Leg. Pbn. 2/83/Law. *Dated, Trivandrum, 25th October* 1983

The following Act of Parliament, published in a Gazette of India Extraordinary, Part II-Section 1, dated the 28th May, 1983, is hereby republished for general information. The Bill as passed by the Houses of Parliament received the assent of the President on the 26th May, 1983.

By order of the Governor,
K. Viswanathan Nair,
Law Secretary.

THE AFRICAN DEVELOPMENT BANK ACT, 1983

(CENTRAL ACT No. 13 of 1983)

An

Act

to implement the international agreement for the establishment and operation of the African Development Bank and for matters connected therewith.

Be it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the African Development Bank Act, 1983.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Agreement" means the agreement for the establishment of the African Development Bank;

(b) "Bank" means the African Development Bank established under the Agreement.

3. *Payments to Bank.*—(1) There shall be paid out of the Consolidated Fund of India, after due appropriation made by Parliament by law in this behalf, all such sums as may, from time to time, be required for the purpose of paying,—

(a) the subscriptions payble by the Central Government to the Bank under Articles 6, 7, 10 and 21 of the Agreement;

(b) any sums payable by the Central Government to the Bank under Article 23 of the agreement.

(2) The Central Government may, if it thinks fit so to do, create and issue to the Bank, in such form as it think fit, any non-interest bearing and non-negotiable notes or other obligations.

4. *Reserve Bank to be depository for Bank.*—The Reserve Bank of India shall be the depository of the Indian currency holdings of the Bank.

5. *Conferment of status and certain immunities, exemptions and privileges on Bank and conferment of certain immunities, exemptions and privileges on its officers and employees.*—(1) Notwithstanding anything to the contrary contained in any other law, the provisions of the agreement set out in the Schedule shall have the force of law in India:

Provided that nothing in Article 57 of the Agreement shall be construed as—

(a) entitling the Bank to import into India goods free of any duty of customs without any restriction on their subsequent sale therein; or

(b) conferring on the Bank any exemption from duties or taxes which form part of the price of goods sold; or

(c) conferring on the Bank any exemption from duties or taxes which are in fact no more than charges for services rendered.

(2) The Central Government may, by notification in the Official Gazette, amend the schedule in conformity with any amendments, duly made and adopted, of the provisions of the Agreement set out therein.

6. *Power to make rules.*—The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

7. *Notifications issued under section 5 and rules made under section 6 to be laid before Parliament.*—Every notification issued under sub-section (2) of section 5 and every rule made under section 6 shall be laid, as soon as may be after it is issued or made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the notification or, as the case may be, in the rule or both Houses agree that the notification or rule should not be issued or made, the notification or rule shall thereafter have

effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

THE SCHEDULE

(*See* section 5)

PROVISIONS OF THE AGREEMENT WHICH SHALL HAVE FORCE OF LAW

AGREEMENT ESTABLISHING THE AFRICAN DEVELOPMENT BANK

CHAPTER VII

STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

ARTICLE 50

STATUS

To enable it to fulfil its purpose and the functions with which it is entrusted, the Bank shall possess full international personality. To those ends it may enter into agreements with members, non-member States and other international organizations. To the same ends, the status, immunities exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

ARTICLE 51

STATUS IN MEMBER COUNTRIES

In the territory of each member the Bank shall possess full juridical personality and, in particular, full capacity:

(a) to contract,

(b) to acquire and dispose of immovable and movable property; and

(c) to institute legal proceedings.

ARTICLE 52

JUDICIAL PROCEEDINGS

1. The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it has appointed an agent for the purpose of accepting service or notice of process or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members.

2. The property and assets of the Bank shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

ARTICLE 53

Immunity of Assets and Archives

1. Property and assets of the Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosurse by executive or legislative action.

2. The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

ARTICLE 54

Freedom of Assets from Restriction

To the extent necessary to carry out the purpose and functions of the Bank and subject to the provisions of this Agreement, all property and other assets of the Bank shall be exempt from restrictions, regulations, controls and moratoria of any nature.

ARTICLE 55

Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.

ARTICLE 56

Personal Immunities and Privileges

1. All governors, directors, alternates, officers and employees of the Bank and experts and consultants performing missions for the Bank :

(i) shall be immune from legal process with respect to acts performed by them in their official capacity.

(ii) where they are not local nationals, shall be accorded the same immunities from immigration, restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations as are accorded by members to the representatives, officials and employees of comparable rank of other members; and

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

2. Experts and consultants performing missions for the Bank shall be accorded such immunities and privileges as are, in the opinion of the Bank, necessary for the independent exercise of their functions during the period of their mission, inclucding the time spent on journeys in connexion therewith.

ARTICLE 57

Exemption from Taxation

1. The Bank, its property, other assets, income and its operations and transactions shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation relating to the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to directors, alternates, officers and other professional staff of the Bank.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

ARTICLE 58

Notification of Implementation

Each member shall promptly inform the Bank of the specific action which it has taken to make effective in its territory the provisions of this Chapter.

ARTICLE 59

Application of Immunities, Exemptions and Privileges

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Bank. The Board of Directors may waive, to such extent and upon such conditions as it may determine, the immunities and exemptions provided in Articles 52, 54, 56 and 57 of this Agreement in cases where its action would in its opinion further the interests of the Bank. The President shall have the right and the duty to waive the immunity of any official in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

കേരള സർക്കാർ

നിയമ (ലഗ്-എ) വകുപ്പ്

വിജ്ഞാപനം

നമ്പർ 12729/ലെജ്. എ2/83/ലം. തിരുവനന്തപുരം, 1983 ജൂലൈ 31/ 1905 ശ്രാവണം 9.

കേരള സംസ്ഥാന നിയമസഭയുടെ താഴെപ്പറയുന്ന ആക്റ്റ്, പൊതു ജനങ്ങളുടെ അറിവിനായി ഇതിനാൽ പ്രസിദ്ധപ്പെടുത്തുന്നു. നിയമസഭ പാസ്സാക്കിയ പ്രകാരമുള്ള ബില്ലിന് 1983 ജൂലൈ 31-ാം തീയതി ഗവർണ്ണറുടെ അനുമതി ലഭിച്ചു.

ഗവർണ്ണറുടെ ഉത്തരവുപ്രകാരം,
കെ. വിശ്വനാഥൻ നായർ,
നിയമവകുപ്പ് സ്പെഷ്യൽ സെക്രട്ടറി.

1983-ലെ 10-ാം ആക്റ്റ്

198 -ലെ കേരള ധനവിനിയോഗ (3-ാം നമ്പർ) ആക്റ്റ്

1983-84 സാമ്പത്തിക വർഷത്തെ സർവ്വീസുകൾക്കായി കേരള സംസ്ഥാന സഞ്ചിതനിധിയിൽ നിന്നും ചില കൂടുതൽ തുകകൾ നൽകുന്നതിനും വിനി യോഗിക്കുന്നതിനും അധികാരപ്പെടുത്തുന്നതിനുള്ള ഒരു ആക്റ്റ്.

പീഠിക.—1983-84 സാമ്പത്തിക വർഷത്തെ സർവ്വീസുകൾക്കായി കേരള സംസ്ഥാന സഞ്ചിതനിധിയിൽ നിന്നും ചില കൂടുതൽ തുകകൾ നൽകുന്ന തിനും വിനിയോഗിക്കുന്നതിനും അധികാരപ്പെടുത്തേണ്ടത് ആവശ്യമായിരിക്കു കയാൽ;

ഇൻഡ്യൻ റിപ്പബ്ലിക്കിന്റെ മുപ്പത്തിനാലാം സംവത്സരത്തിൽ താഴെപ്പറയും പ്രകാരം നിയമമുണ്ടാക്കുന്നു :—

1. ചുരുക്കപ്പേര്.—ഈ ആക്റ്റിന് 1983-ലെ കേരള ധനവിനിയോഗ (3-ാം നമ്പർ) ആക്റ്റ് എന്ന് പേർ പറയാം.

2. 1983-84 സാമ്പത്തികവർഷത്തിലേക്ക് കേരള സംസ്ഥാന സഞ്ചിത നിധിയിൽ നിന്നും 49, 56, 83 400 രൂപ നൽകൽ.—പട്ടികയുടെ (2)-ാം കോളത്തിൽ പറഞ്ഞിട്ടുള്ള സർവ്വീസുകളും ആവശ്യങ്ങളും സംബന്ധിച്ച് 1983-84 സാമ്പത്തിക വർഷത്തിൽ കൊടുത്തു തീർക്കേണ്ടതായി വരുന്ന വിവിധ ചിലവുകൾ നേരിടുന്നതിനായി പട്ടികയുടെ (3)-ാം കോളത്തിൽ പ്രത്യേകം പറഞ്ഞിട്ടുള്ള തുകയിൽ കവിയാത്തതും മൊത്തം നാൽപ്പത്തൊൻപത് കോടി അൻപത്തിയാറുലക്ഷത്തി എൺപത്തി മൂവ്വായിരത്തി നാനൂറു രൂപ വരുന്നതുമായ തുകകൾ കേരള സംസ്ഥാന സഞ്ചിതനിധിയിൽ നിന്നും നൽകുകയും വിനിയോഗിക്കുകയും ചെയ്യാവുന്നതാണ്.

3. ധനവിനിയോഗം.—ഈ ആക്ററ്മൂലം കേരള സംസ്ഥാന സഞ്ചിത നിധിയിൽ നിന്നും നൽകപ്പെടുന്നതിനും വിനിയോഗിക്കപ്പെടുന്നതിനും അധികാരപ്പെടുത്തപ്പെട്ട തുകകൾ പ്രസ്തുത വർഷം സംബന്ധിച്ച് പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള സർവ്വീസുകൾക്കും ആവശ്യങ്ങൾക്കും വേണ്ടി വിനിയോഗിക്കേണ്ടതാണ്.

പട്ടിക

(2-ം 3-ം വകുപ്പുകൾ നോക്കുക)

ഡിമാൻഡ് നമ്പർ	സർവ്വീസുകളും ആവശ്യങ്ങളും		നിയമസഭ വോട്ടു ചെയ്തതിൽ	സഞ്ചിതനിധിയിൽ ചാർജ്ജു ചെയ്തതിൽ	ആകെ
			കവിയാത്ത തുകകൾ		
			രൂപ	രൂപ	രൂപ
(1)	(2)	(3)	(4)	(5)	(6)
II	സംസ്ഥാന തലവൻമാരും, മന്ത്രിമാരും, ആസ്ഥാന ഉദ്യോഗസ്ഥൻമാരും	റവന്യൂ	10,00,100	..	10,00,100
IV	തെരഞ്ഞെടുപ്പുകൾ	റവന്യൂ	20,00,000	..	20,00,000
VIII	എക്സൈസ്	റവന്യൂ	200	..	200
X	ട്രഷറിയും കണക്കുകളും	റവന്യൂ	200	..	..
XI	ജില്ലാഭരണവും പലവകയും	റവന്യൂ	..	62,76,700	62,76,700
XII	പോലീസ്	റവന്യൂ	50,400	3,00,000	3,50,400
XV	പൊതുമരാമത്തുകൾ	റവന്യൂ	7,63,00,300	..	7,63,00,300
		മൂലധനം	74,00,200	..	74,00,200
XVI	പെൻഷനും പലവകയും	റവന്യൂ	100	..	100
XVII	വിദ്യാഭ്യാസവും, കലയും സംസ്ക്കാരവും	റവന്യൂ	52,600	..	52,600
		മൂലധനം	1,00,00,100	..	1,00,00,100
XXI	പൊതുജനാരോഗ്യ എഞ്ചിനീയറിംഗ്	റവന്യൂ	100	..	100
		മൂലധനം	10,38,00,000	..	10,38,00,000
XXII	ഭവന നിർമ്മാണം	മൂലധനം	100	..	100

XXIV	വാർത്താവിതരണവും പ്രസിദ്ധീകരണവും	റവന്യൂ	1,00,000	..	1,00,000
XXVI	ഹരിജനക്ഷേമം ഉൾപ്പെടെയുള്ള സാമൂഹ്യക്ഷേമം	റവന്യൂ	4,50,200	..	4,50,200
		മൂലധനം	1,05,68,000	..	1,05,68,000
XXVII	പ്രകൃതിക്ഷോഭം നിമിത്തമുള്ള ദുരിതാശ്വാസം	റവന്യൂ	80,75,000	..	80,75,000
XXVIII	സഹകരണം	റവന്യൂ	3,09,64,000	..	3,09,64,000
		മൂലധനം	10,00,00,100	..	10,00,00,100
XXIX	പലവക സാമ്പത്തിക സർവ്വീസുകൾ	റവന്യൂ	1,40,00,000	..	1,40,00,000
XXX	കൃഷി	റവന്യൂ	2,50,00,200	..	2,50,00,200
		മൂലധനം	19,00,000	..	19,00,000
XXXIV	ഫിഷറീസ്	മൂലധനം	100	..	100
XXXV	വനം	റവന്യൂ	1,65,00,000	..	1,65,00,000
XXXVI	പഞ്ചായത്ത്	റവന്യൂ	100	..	100
XXXVII	സാമൂഹ്യവികസനം	റവന്യൂ	5,08,70,100	..	5,08,70,100
XXXVIII	വ്യവസായങ്ങൾ	റവന്യൂ	2,00,00,000	..	2,00,00,000
		മൂലധനം	200	..	200
XL	വിദ്യുച്ഛക്തി	മൂലധനം	1,00,00,000	..	1,00,00,000
	പൊതുക്കടം തിരിച്ചടയ്ക്കൽ	മൂലധനം	..	74,300	74,300
		ആകെ	48,90,32,400	66,51,000	49,56,83,400

(ശരിത്തർജ്ജമ)

പി. ജി. വിമലാദേവി,
അണ്ടർ സെക്രട്ടറി (നിയമ വകുപ്പ്).

കേരള സർക്കാർ

നിയമ (നിയമ നിർമ്മാണം-ബി) വകുപ്പ്

വിജ്ഞാപനം

നമ്പർ 4168/ലെഗ്. ബി2/83/ലാ. തിരുവനന്തപുരം, 1983 ഏപ്രിൽ 7/ 1905 ചൈത്രം 17.

1983 ഏപ്രിൽ 6-ാം തീയതി ഗവർണ്ണർ വിളംബരപ്പെടുത്തിയ താഴെ പറയുന്ന ഓർഡിനൻസ് പൊതുജനങ്ങളുടെ അറിവിനായി ഇതിനാൽ പ്രസിദ്ധപ്പെടുത്തുന്നു.

ഗവർണ്ണറുടെ ഉത്തരവുപ്രകാരം,
കെ. വിശ്വനാഥൻ നായർ,
സ്പെഷ്യൽ സെക്രട്ടറി (ലാ).

1983-ലെ 13-ാം നമ്പർ ഓർഡിനൻസ്

1983-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) പുനരുജ്ജീവിപ്പിക്കലും പ്രത്യേക വ്യവസ്ഥകളും ഓർഡിനൻസ്

ഇൻഡ്യൻ റിപ്പബ്ലിക്കിന്റെ മുപ്പത്തിനാലാം സംവത്സരത്തിൽ കേരള ഗവർണ്ണർ വിളംബരപ്പെടുത്തിയത്.

1963-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) ആക്റ്റ്, പ്രസ്തുത ആക്റ്റ് പ്രാബല്യത്തിലുണ്ടായിരുന്ന കാലത്തേക്ക് പുനരുജ്ജീവിപ്പിക്കുന്നതിനും ഭേദഗതി ചെയ്യുന്നതിനും, കൊളുത്തി ചേർത്ത വാഹനങ്ങളും, ട്രാക്റ്റർ-ട്രെയിലർ സംയോജനങ്ങളും, ടില്ലർ-ട്രെയിലർ സംയോജനങ്ങളും മറ്റെതെങ്കിലും മോട്ടോർ വാഹനങ്ങൾ ഉപയോഗിച്ച് വലിക്കുന്ന ട്രെയിലറുകളും മുഖേന ചരക്കുകൾ വഹിക്കുകയോ വലിക്കുകയോ ചെയ്തതിൻമേലുള്ള നികുതി ചുമത്തലിനും പിരിക്കുന്നതിനുംവേണ്ടി ചില പ്രത്യേക വ്യവസ്ഥകൾ ഉണ്ടാക്കുന്നതിനും വേണ്ടിയുള്ള ഒരു ഓർഡിനൻസ്.

പീഠിക.—1975-ലെ 39-ം, 40-ം നമ്പർ റിട്ട് അപ്പീലുകളിൽ, കേരള ഹൈക്കോടതിയുടെ ഒരു ഡിവിഷൻ ബെഞ്ച്, 1963-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) ആക്റ്റിലെ ചരക്കു വാഹനങ്ങൾ എന്ന പ്രയോഗത്തിന്റെ പരിധിയിൽ ട്രാക്റ്റർ-ട്രെയിലർ സംയോജനങ്ങൾ വരുമെന്ന് പറയാൻ കഴിയുന്നതല്ലെന്ന് വിധി പ്രസ്താവിച്ചിട്ടുള്ളതിനാലും;

1963-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) ആക്റ്റ്, 1976-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾക്കുള്ള നികുതി ചുമത്തൽ ആക്റ്റ് 30-ാം വകുപ്പുമൂലം റദ്ദാക്കപ്പെട്ടിട്ടുള്ളതിനാലും ;

കേരള ഹൈക്കോടതിയുടെ പ്രസ്തുത തീർപ്പിന്റെ വെളിച്ചത്തിൽ, 1963-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) ആക്റ്റ്, 1963 ജൂലൈ 1-ാം തീയതി ആരംഭിക്കുകയും 1975 സെപ്റ്റംബർ 30-ാം തീയതി അവസാനിക്കുകയും ചെയ്ത കാലത്തേയ്ക്ക് കൊളുത്തിചേർത്ത വാഹനങ്ങളും ട്രാക്റ്റർ-ട്രെയിലർ സംയോജനങ്ങളും ട്രില്ലർ-ട്രെയിലർ സംയോജനങ്ങളും മററു മോട്ടോർ വാഹനങ്ങളാൽ വലിക്കുന്ന ട്രെയിലറുകളും മുഖേന വഹിക്കുകയോ വലിക്കുകയോ ചെയ്തതായ ചരക്കുകളിൻമേൽ ആ ആക്റ്റിന്റെ കീഴിൽ നികുതി ചുമത്തുന്നതിനും നികുതി പിരിക്കുന്നതിനും ഉള്ള ആവശ്യത്തിലേയ്ക്കായി പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്യേണ്ടത് ആവശ്യമായിരിക്കുന്നതിനാലും ;

മുകളിൽ പറഞ്ഞ ആവശ്യത്തിലേയ്ക്കായി 1983-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) പുനരുജ്ജീവിപ്പിക്കലും പ്രത്യേക വ്യവസ്ഥകളും ഓർഡിനൻസ് (1983-ലെ 3) 1983 ജനുവരി 20-ാം തീയതി കേരള ഗവർണ്ണർ വിളംബരപ്പെടുത്തിയിരുന്നതിനാലും ;

1983 ഫെബ്രുവരി 25-ാം തീയതി ആരംഭിച്ച് 1983 മാർച്ച് 30-ാം തീയതി അവസാനിച്ച കേരള സംസ്ഥാന നിയമസഭയുടെ സമ്മേളന കാലത്ത് നിയമസഭയുടെ ഒരു ആക്റ്റ് മൂലം പ്രസ്തുത ഓർഡിനൻസ് മാററുന്നതിനു ഒരു ബിൽ അവതരിപ്പിച്ച് പാസ്സാക്കാൻ കഴിയാത്തതിനാലും :

ഇൻഡ്യൻ ഭരണഘടന 213-ാം അനുച്ഛേദം (2)-ാം ഖണ്ഡം (എ) എന്ന ഉപഖണ്ഡപ്രകാരം 1983 എപ്രിൽ 7-ാം തീയതി പ്രസ്തുത ഓർഡിനൻസിന് പ്രാബല്യമില്ലാതായിത്തീരുമെന്നതിനാലും ;

പ്രസ്തുത ഓർഡിനൻസിലെ വ്യവസ്ഥകൾ സജീവമായി നിലനിർത്തിയില്ലെങ്കിൽ പ്രയാസങ്ങൾ ഉണ്ടാവുമെന്നതിനാലും ;

കേരള സംസ്ഥാന നിയമസഭ സമ്മേളനത്തിൽ അല്ലാത്തതിനാലും അടിയന്തിര നടപടികൾ എടുക്കുന്നത് ആവശ്യമാക്കിത്തീർക്കുന്ന സാഹചര്യങ്ങൾ നിലവിലുണ്ടെന്നു കേരള ഗവർണ്ണർക്ക് ബോദ്ധ്യം വന്നിരിക്കുന്നതിനാലും ;

ഇൻഡ്യൻ ഭരണഘടന, 213-ാം അനുച്ഛേദം (1)-ാം ഖണ്ഡത്തിലെ ക്ലിപ്ത നിബന്ധന അനുസരിച്ച് രാഷ്ട്രപതിയിൽ നിന്നും നിർദ്ദേശം ലഭിച്ചിരിക്കുന്നതിനാലും ;

ഇപ്പോൾ, അതിനാൽ, കേരള ഗവർണ്ണർ, ഇൻഡ്യൻ ഭരണഘടന 213-ാം അനുച്ഛേദം (1)-ാം ഖണ്ഡംമൂലം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച്, താഴെപറയുന്ന ഓർഡിനൻസ് വിളംബരപ്പെടുത്തുന്നു:—

1. ചുരുക്കപ്പേരും, വ്യാപ്തിയും ആരംഭവും.—(1) ഈ ഓർഡിനൻസിന് 1983-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) പുനരുജ്ജീവിപ്പിക്കലും പ്രത്യേക വ്യവസ്ഥകളും ഓർഡിനൻസ് എന്ന് പേർ പറയാം.

(2) ഇതിന് കേരള സംസ്ഥാനം മുഴുവൻ വ്യാപ്തിയുണ്ടായിരിക്കുന്നതാണ്,

(3) ഇത് 1983 ജാനുവരി 22-ാം തീയതി പ്രാബല്യത്തിൽ വന്നതായി കരുതേണ്ടതാണ്.

2. വ്യാഖ്യാനം.—ഈ ഓർഡിനൻസിൽ ഉപയോഗിച്ചിട്ടുള്ള എല്ലാ വാക്കുകൾക്കും പ്രയോഗങ്ങൾക്കും ഈ ഓർഡിനൻസുമൂലം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്തപ്രകാരമുള്ള 1963-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) ആക്ററിൽ കൊടുത്തിട്ടുള്ള അർത്ഥങ്ങൾ യഥാക്രമം ഉണ്ടായിരിക്കുന്നതാണ്.

3. 1963-ലെ 25-ാം കേരള ആക്ററും അതിൻകീഴിൽ ഉണ്ടാക്കിയിട്ടുള്ള ചട്ടങ്ങളും ചില നിശ്ചിത ആവശ്യങ്ങൾക്കായി പുനരുജ്ജീവിപ്പിക്കൽ.—

1963-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) ആക്ററും (1963-ലെ 25) (ഇതിനുശേഷം പ്രസ്തുത ആക്ററ് എന്നാണ് പരാമർശിക്കപ്പെടുക) അതിൻകീഴിൽ ഉണ്ടാക്കിയിട്ടുള്ള ചട്ടങ്ങളും 1963 ജൂലൈ 1-ാം തീയതി ആരംഭിച്ച് 1975 സെപ്റ്റംബർ 30-ാം തീയതി അവസാനിച്ച കാലത്തേക്കുവേണ്ടി കൊളുത്തി ചേർത്ത വാഹനങ്ങളും ട്രാക്ററർ-ട്രെയിലർ സംയോജനങ്ങളും, ട്രില്ലർ-ട്രെയിലർ സംയോജനങ്ങളും, മററു മോട്ടോർ വാഹനങ്ങളാൽ വലിക്കപ്പെട്ട ട്രെയിലറുകളും മുഖേന വഹിക്കുന്ന ചരക്കുകളിൻമേലുള്ള നികുതി ചുമത്തുന്നതിനും പിരിക്കുന്നതിനും, ആവശ്യവും സഹായകവുമായ ഉപയോഗത്തിനുവേണ്ടി ഇതിനാൽ പുനരുജ്ജീവിപ്പിക്കുകയും ഇതിനുശേഷം അടങ്ങിയിട്ടുള്ള ഭേദഗതികൾക്കും പ്രത്യേക വ്യവസ്ഥകൾക്കും വിധേയമായി പ്രാബല്യത്തിൽ ഉള്ളതായും എല്ലായ്പ്പോഴും പ്രാബല്യത്തിൽ ഉണ്ടായിരുന്നതായും കണക്കാക്കേണ്ടതുമാണ്.

4. 1963-ലെ 25-ാം ആക്ററിന്റെ ഭേദഗതി.—

പ്രസ്തുത ആക്ററ്.—

(1) 2-ാം വകുപ്പിൽ,—

(i) (എ) എന്ന ഖണ്ഡത്തിനുപകരം, താഴെപറയുന്ന ഖണ്ഡങ്ങൾ ചേർക്കേണ്ടതാണ്, അതായത് :—

''(എ) ''കൊളുത്തിചേർത്ത വാഹനം'' എന്നാൽ ട്രെയിലറിന്റെ ഒരു ഭാഗം ട്രാക്ടററിന്റെ മേൽ ചുമത്തത്തക്കവിധത്തിലും, ട്രെയിലറിന്റെ ഭാരത്തിന്റെ ഒരു ഭാഗം ട്രാക്ററർ വഹിക്കത്തക്കവിധത്തിലും, ട്രെയിലർ സംയോജിപ്പിച്ചിട്ടുള്ള ഒരു ട്രാക്ററർ എന്നർത്ഥമാകുന്നു ;

(എ i) ''വണ്ടി'' എന്നതിൽ അതിന്റെ വ്യാകരണപരമായ വ്യുതിയാനങ്ങളും സജാതീയ പ്രയോഗങ്ങളും ഉൾപ്പെടെ ചരക്കുകൾ ഒരു സ്ഥലത്തുനിന്നും മറെറാരു സ്ഥലത്തേയ്ക്ക് കൊണ്ടുപോകുന്നത് ഉൾപ്പെടുന്നതാണ് ;

(എii) ''ചരക്കു വാഹനം'' എന്നാൽ ചരക്കുകൾ കൊണ്ടുപോകുന്നതിനു മാത്രമായോ അഥവാ യാത്രക്കാരെക്കൂടി കൊണ്ടുപോകുന്നതിന് ഉപയോഗിക്കുന്നതിനുവേണ്ടിയോ നിർമ്മിക്കുകയോ, സംവിധാനപ്പെടുത്തുകയോ ചെയ്തിട്ടുള്ള ഏതെങ്കിലും മോട്ടോർ വാഹനവും അഥവാ അപ്രകാരം നിർമ്മിച്ചതോ സംവിധാനം ചെയ്തതോ അല്ലാത്ത ഏതെങ്കിലും മോട്ടോർ വാഹനം ചരക്കുകൾ കൊണ്ടു പോകുന്നതിന് മാത്രമായോ അഥവാ യാത്രക്കാരേകൂടി കൊണ്ടു പോകുന്നതിനുവേണ്ടിയോ ഉപയോഗിക്കുമ്പോൾ അതും എന്നർത്ഥമാകുന്നതും, ചരക്കുകൾ കൊണ്ടുപോകുന്നതിനുവേണ്ടി ഉപയോ

ഗിക്കുന്ന കൊളുത്തിചേർത്ത വാഹനവും ഒരു ട്രാക്ടർ-ട്രെയിലർ സംയോജനവും, ഒരു ട്രില്ലർ-ട്രെയിലർ സംയോജനവും മറേറതെങ്കിലും മോട്ടോർ വാഹനങ്ങൾ വലിക്കുന്ന ഒരു ട്രെയിലറും ഉൾപ്പെടുന്നതുമാകുന്നു''.

(ii) (ഇ) എന്ന ഖണ്ഡത്തിനുപകരം താഴെപറയുന്ന ഖണ്ഡം ചേർക്കേണ്ടതാണ്, അതായത് :—

''(ഇ) ''പൊതുചരക്കുവാഹനം'' എന്നാൽ വാടകയ്ക്കോ പ്രതിഫലത്തിനോവേണ്ടി ചരക്കുകൾ കൊണ്ടുപോകുന്ന ചരക്കു വാഹനം എന്നർത്ഥമാകുന്നു ;''

(2) 3-ാം വകുപ്പിൽ ''കയററിഅയച്ച'' എന്ന വാക്കിനുപകരം ഇതു വരുന്നതായ രണ്ടു സ്ഥലങ്ങളിലും ''കൊണ്ടുപോകുന്ന'' എന്ന വാക്ക് ചേർക്കേണ്ടതാണ്.

(3) 4-ാംവകുപ്പിനുപകരം താഴെപറയുന്ന വകുപ്പു ചേർക്കേണ്ടതാണ് ; അതായത് :—

''4. നികുതി തുക മൊത്തമാക്കൽ.—ഓപ്പറേററർക്ക് അയാളുടെ ഹിതാഹിത സ്വാതന്ത്ര്യം അനുസരിച്ച്, 3-ാം വകുപ്പ്, (3)-ാം ഉപവകുപ്പിൻ കീഴിൽ അയാൾ നൽകേണ്ട നികുതി അതിനുപകരമായി ഈ ഓർഡിനൻസിന്റെ ആരംഭം മുതൽ തൊണ്ണൂറു ദിവസം കഴിയുന്നതിന് മുമ്പായി പട്ടികയിൽ പ്രത്യേകമായി പറഞ്ഞിട്ടുള്ളപ്രകാരം നിശ്ചയിച്ചിട്ടുള്ള ഒരു ഫീസ് നിർദ്ദിഷ്ട ആഫീസർക്കോ ഗസററിൽ വിജ്ഞാപനംമൂലം സർക്കാർ അധികാരപ്പെടുത്തിയ ഏതെങ്കിലും ആഫീസർക്കോ മൊത്തതുകയായി നൽകാവുന്നതാണ്.'' ;

(4) 14-ാം വകുപ്പിൽ ''കയററി അയച്ച'' എന്ന വാക്കിനുപകരം ''കൊണ്ടുപോകുന്ന'' എന്ന വാക്ക് ചേർക്കേണ്ടതാണ്.

5. ട്രാക്ടർ-ട്രെയിലർ സംയോജനങ്ങളിൻമേലുള്ള നികുതി സംബന്ധിച്ച പ്രത്യേക വ്യവസ്ഥകൾ.—(1) പ്രസ്തുത ആക്ററിലോ അതിൻ കീഴിൽ ഉണ്ടാക്കിയിട്ടുള്ള ചട്ടങ്ങളിലോ വിപരീതമായി എന്തുതന്നെ അടങ്ങിയിരുന്നാലും, 1983 ജൂലൈ 1-ാംതീയതി ആരംഭിച്ച് 1975 സെപ്ററംബർ 30-ാം തീയതി അവസാനിച്ച കാലത്ത് കൊളുത്തിചേർത്ത വാഹനങ്ങളും, ട്രാക്ടർ-ട്രെയിലർ സംയോജനങ്ങളും, ട്രില്ലർ-ട്രെയിലർ സംയോജനങ്ങളും മററ് ഏതെങ്കിലും മോട്ടോർ വാഹനത്താൽ വലിക്കുന്ന ട്രെയിലറുകളും മുഖേന കൊണ്ടുപോയ സാധനങ്ങളിൻമേൽ, പ്രസ്തുത ആക്ററിൻ കീഴിലുള്ള നികുതിയെ സംബന്ധിച്ച്, താഴെ പറയുന്ന വ്യവസ്ഥകൾ ബാധകമായിരിക്കുന്നതാണ്.

(2) (1)-ാം ഉപവകുപ്പിൽ പരാമർശിച്ചിട്ടുള്ള നികുതി കൊളുത്തിചേർത്ത വാഹനങ്ങളും ട്രാക്ടർ ട്രെയിലർ സംയോജനങ്ങളും ട്രില്ലർ-ട്രെയിലർ സംയോജനങ്ങളും മറേറതെങ്കിലും മോട്ടോർ വാഹനത്താൽ വലിയ്ക്കുന്ന ട്രെയിലറുകളും മുഖേന കൊണ്ടുപോയ എല്ലാ സാധനങ്ങളിൻമേലും, പ്രസ്തുത ആക്ററിലോ അതിൻ കീഴിലോ പ്രത്യേകമായി പറഞ്ഞിട്ടുള്ള നിരക്കിൽ കാലാകാലങ്ങളിൽ ചുമത്തേണ്ടതാണ്.

എന്നാൽ പ്രസ്തുത ആക്ററുപ്രകാരമോ അതിൻകീഴിലോ നികുതി ചുമത്തലിൽ നിന്നും ഒഴിവാക്കിയിട്ടുള്ള സാധനങ്ങളിൻമേൽ യാതൊരു നികുതിയും ചുമത്താൻ പാടുള്ളതല്ല.

(3) (1)-ാം ഉപവകുപ്പിൽ എന്തുതന്നെ അടങ്ങിയിരുന്നാലും ആ ഉപവകുപ്പിൽ പരാമർശിച്ചിട്ടുള്ള ഏതെങ്കിലും സാധനങ്ങളിൻമേൽ ഈ ഓർഡിനൻസിന്റെ ആരംഭത്തിന് മുൻപായി പ്രസ്തുത ആക്ററു പ്രകാരം ചുമത്തുകയും അസസ്സു ചെയ്ത ഏതെങ്കിലും നികുതി, ഈ ഓർഡിനൻസ്

പ്രകാരം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്ത പ്രകാരമുള്ള പ്രസ്തുത ആക്ററിൻ കീഴിൽ ചുമത്തിയതായും അസസു ചെയ്തതായും പരിഗണിക്കേണ്ടതും, ഏതെങ്കിലും നികുതി അങ്ങനെയുള്ള ചരക്കുകളിൻമേൽ നൽകി കഴിഞ്ഞിട്ടുണ്ടെങ്കിൽ അങ്ങിനെ നൽകിയ നികുതി 6-ാം വകുപ്പിൽ വ്യവസ്ഥ ചെയ്തിരിക്കുന്നതുപോലെ, ഈ ഓർഡിനൻസ് പ്രകാരം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്ത പ്രകാരമുള്ള പ്രസ്തുത ആക്ററിൻ കീഴിൽ നൽകേണ്ട നികുതിയുമായി തട്ടി കഴിക്കേണ്ടതാണ്.

(4) ഈ ഓർഡിനൻസ് പ്രകാരം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്ത പ്രകാരമുള്ള പ്രസ്തുത ആക്ററിൻ കീഴിൽ നികുതി നൽകേണ്ടതായിട്ടുള്ള ഓരോ കൊളുത്തിച്ചേർത്ത വാഹനത്തിന്റെയോ ട്രാക്ററർ-ട്രെയിലർ സംയോജനത്തിന്റെയോ ടില്ലർ-ട്രെയിലർ സംയോജനത്തിന്റെയോ അല്ലെങ്കിൽ മററേതെങ്കിലും മോട്ടോർ വാഹനത്താൽ വലിയ്ക്കുന്ന ട്രെയിലറിന്റെയോ ഓപ്പറേറററർ ഈ ഓർഡിനൻസിന്റെ ആരംഭത്തീയതി മുതൽ തൊണ്ണൂറ് ദിവസത്തിനകം, നിർദ്ദിഷ്ട ആഫീസർക്കോ ഗസററിൽ വിജ്ഞാപനം മൂലം സർക്കാർ ഇതിലേക്കായി അധികാരപ്പെടുത്തിയ മററേതെങ്കിലും ആഫീസർക്കോ ഈ ഓർഡിനൻസ് പ്രകാരം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്ത പ്രകാരമുള്ള പ്രസ്തുത ആക്ററിൻ കീഴിൽ നൽകേണ്ട നികുതി അസസ്സു ചെയ്യുന്നതിനുവേണ്ടി, പ്രസ്തുത ആക്ററിൽ നിർണ്ണയിച്ചിട്ടുള്ള ഫാറത്തിൽ, ഒരു റിട്ടേണോടുകൂടി അപേക്ഷ നൽകേണ്ടതാണ്.

(5) (4)-ാം ഉപവകുപ്പിൽ ആവശ്യപ്പെട്ടതുപോലെ അപേക്ഷിക്കുന്നതിനോ റിട്ടേൺ നൽകുന്നതിനോ ഏതെങ്കിലും ഓപ്പറേറററർ വീഴ്ച വരുത്തിയാൽ നിർദ്ദിഷ്ട ആഫീസറോ, ആ ഉപവകുപ്പിൻപ്രകാരം സർക്കാർ അധികാരപ്പെടുത്തിയ ആഫീസറോ അദ്ദേഹത്തിന് ആവശ്യമെന്ന് തോന്നുന്ന അന്വേഷണം നടത്തിയതിനുശേഷവും ഓപ്പറേറററർക്ക് പറയാനുള്ളത് പറയുന്നതിന് ഒരവസരം നൽകിയതിനുശേഷവും അദ്ദേഹത്തിന്റെ തീരുമാനത്തിൽ ഓപ്പറേറററർ നൽകേണ്ടതായ നികുതി അസസ്സ് ചെയ്യേണ്ടതാണ്.

(6) പ്രസ്തുത ആക്ററിലോ, അതിൻകീഴിൽ ഉണ്ടാക്കിയിട്ടുള്ള ചട്ടങ്ങളിലോ ഉള്ള കാലാവധി സംബന്ധിച്ച ഏതെങ്കിലും വ്യവസ്ഥകളം എന്തു തന്നെയായാലും ഈ ഓർഡിനൻസു പ്രകാരം പുനരുജ്ജീവിപ്പിക്കുകയും, ഭേദഗതി ചെയ്യുകയും ചെയ്ത പ്രകാരമുള്ള പ്രസ്തുത ആക്ററുപ്രകാരം നൽകേണ്ട നികുതി ഈ ഓർഡിനൻസിന്റെ പ്രാബല്യം മുതൽ പത്തു വർഷത്തിനകം ചുമത്തുകയും അസസ്സു ചെയ്യുകയും ചെയ്യാവുന്നതും, പ്രസ്തുത ആക്ററും, അതിൻകീഴിൽ ഉണ്ടാക്കിയിട്ടുള്ള ചട്ടങ്ങളും വ്യവസ്ഥ ചെയ്യുന്ന രീതിയിൽ വസൂലാക്കാവുന്നതുമാണ്.

6. പിരിച്ചെടുത്ത നികുതി തട്ടിക്കഴിക്കൽ.— (1) 1963 ജൂലൈ 1-ാം തീയതി ആരംഭിക്കുകയും 1975 സെപ്ററംബർ 30-ാം തീയതി അവസാനിക്കുകയും ചെയ്ത കാലത്ത് പ്രസ്തുത ആക്ററു പ്രകാരം ഏതെങ്കിലും കൂട്ടി കൊളുത്തിയ വാഹനമോ ട്രാക്ററർ-ട്രെയിലർ സംയോജനമോ, ടില്ലർ-ട്രെയിലർ സംയോജനമോ മററേതെങ്കിലും മോട്ടോർ വാഹനത്താൽ വലിക്കുന്ന ട്രെയിലറോ മുഖേന കൊണ്ടുപോയ ചരക്കുകളിൻമേൽ ഏതെങ്കിലും ഓപ്പറേറററിൽ നിന്നോ മററു വ്യക്തിയിൽ നിന്നോ പിരിച്ച നികുതി തുക ഈ ഓർഡിനൻസ് പ്രകാരം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്തപ്രകാരമുള്ള പ്രസ്തുത ആക്ററു പ്രകാരം പ്രസ്തുത കാലത്തേയ്ക്ക് അയാളിൽ നിന്നും ലഭിക്കേണ്ട കുടിശ്ശികയുമായി തട്ടിക്കഴിക്കേണ്ടതാണ്.

(2) പ്രസ്തുത ആക്റ്റു പ്രകാരം ഓപ്പറേററിൽ നിന്നോ മററു വ്യക്തിയിൽ നിന്നോ പിരിച്ച അങ്ങിനെയുള്ള നികുതി ഈ ഓർഡിനൻസ് പ്രകാരം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്ത പ്രകാരമുള്ള പ്രസ്തുത ആക്റ്റു പ്രകാരം നൽകേണ്ട കുടിശ്ശിക നികുതിയെക്കാരം കുറവാണെങ്കിൽ ബാക്കി തുക മാത്രം അയാളിൽ നിന്നും വസൂലാക്കേണ്ടതും അങ്ങനെ പിരിച്ച നികുതി അധികമാണെങ്കിൽ അപ്രകാരം അധികമായിട്ടുള്ളത് അയാൾക്ക് തിരികെ കൊടുക്കേണ്ടതുമാണ്.

7. ഒഴിവാക്കൽ.—ഈ ഓർഡിനൻസിൽ അടങ്ങിയിട്ടുള്ള യാതൊന്നും തന്നെ ഈ ഓർഡിനൻസ് പ്രാബല്യത്തിൽ വരുന്നതിനു മുൻപ് എന്തെങ്കിലും ചെയ്യുകയോ ചെയ്യാൻ വിട്ടുപോകുകയോ ചെയ്തതിനെ സംബന്ധിച്ച ഒരു കുററത്തിന് ശിക്ഷിക്കപ്പെടാൻ ഒരു വ്യക്തിയെയും ബാദ്ധ്യസ്ഥനാക്കുന്നതല്ല.

8. റദ്ദാക്കലും ഒഴിവാക്കലും.—(1) 1983-ലെ കേരള മോട്ടോർ വാഹനങ്ങൾ (യാത്രക്കാർക്കും ചരക്കുകൾക്കുമുള്ള നികുതി ചുമത്തൽ) പുനരുജ്ജീവിപ്പിക്കലും പ്രത്യേക വ്യവസ്ഥകളും ഓർഡിനൻസ് (1983-ലെ 3) ഇതിനാൽ റദ്ദാക്കിയിരിക്കുന്നു.

(2) അപ്രകാരം റദ്ദാക്കിയിരുന്നാൽ തന്നെയും പ്രസ്തുത ഓർഡിനൻസ് പ്രകാരമോ, പ്രസ്തുത ഓർഡിനൻസുമൂലം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്തപ്രകാരമുള്ള പ്രസ്തുത ആക്റ്റു പ്രകാരമോ ചെയ്ത ഏതെങ്കിലും കാര്യമോ എടുത്ത ഏതെങ്കിലും നടപടിയോ അതതു സംഗതിപോലെ ഈ ഓർഡിനൻസ് പ്രകാരമോ ഈ ഓർഡിനൻസുമൂലം പുനരുജ്ജീവിപ്പിക്കുകയും ഭേദഗതി ചെയ്യുകയും ചെയ്ത പ്രകാരമുള്ള പ്രസ്തുത ആക്റ്റു പ്രകാരമോ ചെയ്തതോ എടുത്തതോ ആയി കരുതേണ്ടതാണ്.

പി. രാമചന്ദ്രൻ,
ഗവർണ്ണർ.

(ശരിത്തർജ്ജമ)

എസ്. ശ്രീധരൻ നാടാർ,
അഡീഷണൽ ഹെഡ് ട്രാൻസ്ലേറ്റർ.

Kerala Gazette No. 46 dated 22nd November 1983.
PART I Section iii

കേരള സർക്കാർ

നിയമ (നിയമനിർമ്മാണം-എ) വകുപ്പ്

വിജ്ഞാപനം

നമ്പർ 9857/ലെഗ്. എ1/83/ലാ. തിരുവനന്തപുരം, 1983 ആഗസ്റ്റ് 26/ 1905 ഭാദ്രം 4.

1983 ആഗസ്റ്റ് 20-ാം തീയതി ഗവർണ്ണർ വിളംബരപ്പെടുത്തിയ താഴെ പറയുന്ന ഓർഡിനൻസ് പൊതുജനങ്ങളുടെ അറിവിനായി ഇതിനാൽ പ്രസിദ്ധപ്പെടുത്തുന്നു.

ഗവർണ്ണറുടെ ഉത്തരവു പ്രകാരം,
കെ. വിശ്വനാഥൻ നായർ,
നിയമവകുപ്പു സെക്രട്ടറി.

1983-ലെ 28-ാം നമ്പർ ഓർഡിനൻസ്

1983-ലെ കേരള നികുതി വസൂലാക്കൽ (ഭേദഗതി) ഓർഡിനൻസ്

ഇൻഡ്യൻ റിപ്പബ്ലിക്കിന്റെ മുപ്പത്തിനാലാം സംവൽസരത്തിൽ കേരള ഗവർണ്ണർ വിളംബരപ്പെടുത്തിയത്.

1968-ലെ കേരള നികുതി വസൂലാക്കൽ ആക്റ്റ് ഭേദഗതി ചെയ്യുന്നതിനുള്ള ഒരു ഓർഡിനൻസ്.

പീഠിക.—1983 ഫെബ്രുവരി 22-ാം തീയതി കേരള ഗവർണ്ണർ 1983-ലെ കേരള നികുതി വസൂലാക്കൽ (ഭേദഗതി) ഓർഡിനൻസ് (1983-ലെ 9) വിളംബരപ്പെടുത്തിയിരുന്നതിനാലും ;

1983 ഫെബ്രുവരി 25-ാം തീയതി ആരംഭിച്ചതും 1983 മാർച്ച് 30-ാം തീയതി അവസാനിച്ചതുമായ കേരള സംസ്ഥാന നിയമസഭയുടെ സമ്മേളനത്തിനിടയ്ക്ക് നിയമസഭയുടെ ഒരു ആക്റ്റുമൂലം പ്രസ്തുത ഓർഡിനൻസ് മാററുന്നതിനുള്ള ഒരു ബിൽ കൊണ്ടുവരുന്നതിനും പാസാക്കുന്നതിനും കഴിയാതിരുന്നതിനാലും ;

പ്രസ്തുത ഓർഡിനൻസിലെ വ്യവസ്ഥകൾ സജീവമായി നിലനിറുത്തുന്നതിനുവേണ്ടി 1983 ഏപ്രിൽ 6-ാം തീയതി കേരള ഗവർണ്ണർ 1983-ലെ കേരള നികുതി വസൂലാക്കൽ (ഭേദഗതി) ഓർഡിനൻസ് (1983-ലെ 15) വിളംബരപ്പെടുത്തിയതിനാലും ;

1983 ജൂൺ 20-ാം തീയതി ആരംഭിച്ചതും 1983 ആഗസ്റ്റ് 4-ാം തീയതി അവസാനിച്ചതുമായ കേരള സംസ്ഥാന നിയമസഭയുടെ സമ്മേളനത്തിനിടയ്ക്ക് നിയമസഭയുടെ ഒരു ആക്റ്റു മൂലം 1983-ലെ 15-ാം ഓർഡിനൻസ് മാററുന്നതിനുള്ള ഒരു ബിൽ കൊണ്ടുവരുന്നതിനും പാസാക്കുന്നതിനും കഴിയാതിരുന്നതിനാലും ;

ഇൻഡ്യൻ ഭരണഘടന 213-ാം അനുച്ഛേദം (2)-ാം ഖണ്ഡം (എ) എന്ന ഉപഖണ്ഡപ്രകാരം, 1983-ലെ 15-ാം ഓർഡിനൻസിനു 1983 ആഗസ്റ്റ് 1-ാം തീയതി മുതൽ പ്രാബല്യം ഇല്ലാതായിത്തീർന്നതിനാലും ;

പ്രസ്തുത ഓർഡിനൻസിലെ വ്യവസ്ഥകൾ സജീവമായി നിലനിറുത്തിയില്ലെങ്കിൽ ബുദ്ധിമുട്ടുകൾ ഉണ്ടാകുമെന്നതിനാലും ;

കേരള സംസ്ഥാന നിയമസഭ സമ്മേളനത്തിലല്ലാതിരുന്നതിനാലും, സത്വര നടപടികൾ എടുക്കേണ്ട പരിതസ്ഥിതികൾ നിലവിലുണ്ടെന്ന് കേരള ഗവർണ്ണർക്ക് ബോദ്ധ്യം വന്നിരിക്കുന്നതിനാലും ;

ഇപ്പോൾ, അതിനാൽ, ഇൻഡ്യൻ ഭരണഘടനയുടെ 213-ാം അനുച്ഛേദം (1)-ാം ഖണ്ഡംമൂലം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച്, കേരള ഗവർണ്ണർ താഴെപ്പറയുന്ന ഓർഡിനൻസ് വിളംബരപ്പെടുത്തുന്നു.

1. <u>ചുരുക്കപ്പേരും പ്രാരംഭവും.</u>—(1) ഈ ഓർഡിനൻസിന് 1983-ലെ കേരള നികുതി വസൂലാക്കൽ (ഭേദഗതി) ഓർഡിനൻസ് എന്ന് പേർ പറയാം.

(2) ഇത്, 1983 ഫെബ്രുവരി 22-ാം തീയതി പ്രാബല്യത്തിൽ വന്നതായി കരുതേണ്ടതാണ്.

2. <u>1968-ലെ 15-ാം ആക്റ്റ് താൽക്കാലികമായി ഭേദഗതി ചെയ്യേണ്ടതാണെന്ന്.</u>—ഈ ഓർഡിനൻസ് നിലവിലിരിക്കുന്ന കാലയളവിൽ 1968-ലെ കേരള നികുതി വസൂലാക്കൽ ആക്റ്റിന് (1968-ലെ 15) (ഇതിനു ശേഷം പ്രധാന ആക്റ്റ് എന്നാണ് പരാമർശിക്കപ്പെടുക) 3-ഉം, 4-ഉം വകുപ്പുകളിൽ പറഞ്ഞിരിക്കുന്ന ഭേദഗതികൾക്ക് വിധേയമായി പ്രാബല്യം ഉണ്ടായിരിക്കുന്നതാണ്.

3. <u>7-ാം വകുപ്പിന്റെ ഭേദഗതി.</u>—പ്രധാന ആക്റ്റിലെ 7-ാം വകുപ്പിൽ "കുടിശ്ശികക്കാരനെ രേഖാമൂലമുള്ള ഡിമാൻറ് കാണിക്കേണ്ടതാണ്" എന്ന വാക്കുകൾക്കു പകരം "കുടിശ്ശികക്കാരന് രേഖാമൂലമുള്ള ഡിമാൻറ് നൽകേണ്ടതാണ്" എന്ന വാക്കുകൾ ചേർക്കേണ്ടതാണ്.

4. <u>74-ാം വകുപ്പിന്റെ ഭേദഗതി.</u>—പ്രധാന ആക്റ്റ് 74-ാം വകുപ്പിൽ "നോട്ടീസ് അല്ലെങ്കിൽ ഉത്തരവ്" എന്ന വാക്കുകൾക്കു പകരം അവ വരുന്നിടത്തെല്ലാം "നോട്ടീസ്, ഡിമാൻറ് അഥവാ ഉത്തരവ്" എന്ന വാക്കുകൾ ചേർക്കേണ്ടതാണ്.

5. <u>ഒഴിവാക്കൽ.</u>—1983-ലെ കേരള നികുതി വസൂലാക്കൽ (ഭേദഗതി) ഓർഡിനൻസ് (1983-ലെ 15) (ഇതിനുശേഷം പ്രസ്തുത ഓർഡിനൻസ് എന്നാണ് പരാമർശിക്കപ്പെടുക) പ്രാബല്യത്തിലില്ലെങ്കിൽ തന്നെയും,—

(എ) പ്രസ്തുത ഓർഡിനൻസുമൂലം ഭേദഗതി ചെയ്ത പ്രകാരമുള്ള പ്രധാന ആക്റ്റുപ്രകാരം ചെയ്തതോ ചെയ്തതായി കരുതുന്നതോ ആയ ഏതെങ്കിലും സംഗതിയോ എടുത്തതോ എടുത്തതായി കരുതുന്നതോ ആയ ഏതെങ്കിലും നടപടിയോ ഈ ഓർഡിനൻസുമൂലം ഭേദഗതി ചെയ്ത പ്രകാരമുള്ള പ്രധാന ആക്റ്റുപ്രകാരം ചെയ്തതായോ എടുത്തതായോ കരുതേണ്ടതാകുന്നു.

(ബി) പ്രസ്തുത ഓർഡിനൻസിന്റെ പ്രാബല്യം നഷ്ടപ്പെടാതിരുന്നുവെങ്കിൽ പ്രസ്തുത ഓർഡിനൻസുമൂലം ഭേദഗതി ചെയ്ത പ്രകാരമുള്ള പ്രധാന ആക്റ്റ് പ്രകാരം ചെയ്യാനോ എടുക്കാനോ കഴിയുമായിരുന്നതും പ്രസ്തുത ഓർഡിനൻസ് പ്രാബല്യത്തിലില്ലാതായതിനു ശേഷവും ഈ ഓർഡിനൻസ് ഗസററിൽ പ്രസിദ്ധീകരിച്ച തീയതിക്ക് മുമ്പും ചെയ്തിട്ടുള്ളതോ എടുത്തിട്ടുള്ളതോ ആയതുമായ ഏതെങ്കിലും സംഗതിയോ നടപടിയോ, ഈ ഓർഡിനൻസുമൂലം ഭേദഗതി ചെയ്ത പ്രകാരമുള്ള പ്രധാന ആക്റ്റ് പ്രകാരം ചെയ്തതായോ എടുത്തതായോ കരുതേണ്ടതാകുന്നു.

പി. രാമചന്ദ്രൻ,
ഗവർണ്ണർ.

(ശരിത്തർജ്ജമ)

എസ്. ശ്രീധരൻ നാടാർ,
അഡീഷണൽ ഹെഡ് ട്രാൻസ്ലേറ്റർ.

GOVERNMENT OF KERALA

Local Administration and Social Welfare Department

NOTIFICATION

No. 9729/C3/83/LA&SWD. *Dated, Trivandrum, 25th October* 1983.

S.R.O. No. 1638/83.—The following draft Rules further to amend the Kerala Panchayats (Common Service) Rules, 1977, issued under G. O. (Ms) 81/77/LA & SWD. dated the 23rd March 1977, and published as S. R. O. No. 252/77 in the Kerala Gazette Extraordinary No. 180 dated the 23rd March 1977, which the Government of Kerala propose to make, in exercise of the powers conferred by sub section (2) of section 39 of the Kerala Panchayats Act, 1960 (32 of 1960), read with sub section (1) of section 129 of the said Act is hereby published for general information as required by subsection (2) of section 130 of the said Act.

Notice is hereby given that the said draft will be taken up for consideration on or after 30-12-1983 and that any objection that may be received in respect of the said draft from any person before the date specified above will be considered by the Government.

Objections and suggestions, if any, shall be addressed to the Secretary to Government, Local Administration and Social Welfare Department, Trivandrum.

Draft Rules

1. *Short title and Commencement.*—(1) These Rules may be called the Kerala Panchayats (Common Service) Amendment Rules, 1983.

(2) They shall come into force atonce.

2. *Amendment of the Rules:*—In the Kerala Panchayats (Common Service) Rules 1977 in rule (5), after sub-rule (2) the following sub-rule shall be inserted, namely:—

(2A) The leave allowance of an employee shall be charged to the funds of the various Panchayats under which he has served in proportion to the aggregate salary paid to him from each such panchayat during the periods of service immediately proceeding the leave, which is taken in to account for granting such leave, the portion or portions of the leave allowance chargeable to the funds of other panchayats shall be paid by the panchayats concerned, to the panchayats from which the leave allowances are paid to the employee. Apportionment of leave allowance for the purpose shall be made by the District Panchayat Officers concerned.

By order of the Governor,
M.S.K. Ramaswamy,
Commissioner and Secretary to Government.

[P.T.O.]

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

At present there is no provision in the Kerala Panchayat (Common service) Rules, 1977 for the apportionment of leave salary of the Panchayat employees who are liable to transfer from one panchayat to another Government consider that it is necessary to include necessary provision in the Kerala Panchayat (Common Service) Rules 1977 for the apportionment of leave salary of the Panchayat employee. The notification is intended to achieve the above object.

GOVERNMENT OF KERALA

Taxes (G) Department

NOTIFICATION

G. O. Ms. No. 83/83/TD. *Dated, Trivandrum, 8th November* 1983.

S. R. O. No. 1639/83.—In exercise of the powers conferred by sections 18, 18A, 24 and 69 of the Abkari Act, 1 of 1077, the Government of Kerala hereby make the following rules further to amend the Foreign Liquor Rules, published under notification No. SR4-1859/52/RD dated the 17th January, 1953, in the Travancore-Cochin Gazette Extraordinary No. 2 dated the 17th January, 1953, as subsequently amended, namely:—

RULES

1. *Short title and commencement*:—(i) These rules may be called the Foreign Liquor (Amendment) Rules, 1983.

(ii) They shall come into force at once.

2. In the Foreign Liquor Rules in

Form FLI, to condition 2, the following shall be added at the end, namely:—

"But the Civil Supplies Corporation may sell, in 180 ml. bottles of foreign liquor, the balance stock in their Bonded Warehouses, through their Foreign Liquor Wholesale Shops. Two bottles at a time shall be sold to each consumer".

By order of the Governor,
R. P. SINGH,
Secretary to Government.

Explanatory Note

(This is not part of amendment. But is intended to indicate its general purport).

Under the present rule there is no provision for sale of foreign liquor of 180 ml. size through Foreign Liquor Wholesale Shops. The disposal of the stock of 180 ml. bottles as a result of the closure of foreign liquor Bonded Warehouses in auction as prescribed in the Foreign Liquor Rules will result in substantial loss to the Corporation. Since the Corporation is a Government undertaking, the rules have to be relaxed. Hence this amendment.

GOVERNMENT OF KERALA

Transport, Fisheries and Ports (C) Department

NOTIFICATION

G.O. Rt. No. 858/83/TF&P. *Dated, Trivandrum, 31st October* 1983.

S. R. O. No. 1640/83.—In exercise of the powers conferred by section 28 of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), the Government of Kerala hereby make the following Rules to amend the Kerala Motor Vehicles Taxation Rules, 1975, namely:—

RULES

1. *Short title and commencement.*—(1) These rules may be called the Kerala Motor Vehicles Taxation (Amendment) Rules, 1983.

(2) They shall come into force at once.

2. *Amendment of Rule* 4.—In the Kerala Motor Vehicles Taxation Rules, 1975, in rule 4 after the words "or the State Bank of India" the words "or any of the Nationalised Banks or payment orders of Reserve Bank of India" shall be inserted.

By order of the Governor,
V.A. AUGUSTINE,
Additional Secretary to Government.

Explanatory Note

(This is not part of the notification but is intended to indicate the general purport.)

The Indian Banks' Association has pointed out that the Motor Vehicles Department is not accepting demand drafts of Banks other than the State Bank of India and the State Bank of Travancore towards payment of Motor Vehicles tax and that this is causing much hardship to the owners of the Vehicles as sometimes they have to go to distant branches of the State Bank of India or the State Bank of Travancore to obtain the demand draft. The Association has requested to instruct the Motor Vehicles Department to accept demand drafts of any scheduled bank. Government have considered the proposal and they are of the view that overcrowding in State Bank of India and State Bank of Travancore branches can be avoided if demand drafts of Nationalised Banks are also accepted. The Finance Department in Circular No. 34/83/Fin. dated 17-6-1983 requested to accept the payment orders issued by the Reserve Bank of India towards remittance of motor vehicle tax. This can be achieved by an amendment of the Kerala Motor Vehicles Taxation Rules, 1975. Hence the notification.

G. 1667.

Government of Kerala
1983

Reg. No. KL/TV(N)/12



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കേരള സർക്കാർ

ഗതാഗതവും മത്സ്യബന്ധനവും തുറമുഖവും (എച്ച്) വകുപ്പ്

വിജ്ഞാപനം

നമ്പർ, 26593/എച്ച്. 3/83/ററി. എഫ്. ആൻറ് പി.

തിരുവനന്തപുരം, 1983 നവംബർ 16.

എസ്. ആർ. ഒ. നമ്പർ 1652/83.—ഇൻഡ്യൻ ഭരണഘടനയുടെ 258-ാം അനുച്ഛേദം (1)-ാം ഖണ്ഡംമൂലം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച് രാഷ്ട്രപതി 1963 മേയ് 31-ാം തീയതിയിലെ 2-4-63 ജുഡീഷ്യൽ II എന്ന നമ്പർ വിജ്ഞാപനംമൂലം കേരള സംസ്ഥാനത്ത് യൂണിയൻെറ ആവശ്യത്തിനായി ഭൂമി വിലയ്ക്കെടുക്കുന്നതു സംബന്ധിച്ച് 1961-ലെ കേരള സ്ഥലമെടുപ്പ് ആക്ട് (1962-ലെ 21) പ്രകാരമുള്ള കേന്ദ്രസർക്കാരിൻെറ ചുമതലകൾ കേരള സർക്കാരിനെ അവരുടെ സമ്മതത്തോടുകൂടി ഭരമേൽപ്പിച്ചിരിക്കുന്നതിനാലും;

താഴെ പട്ടികയിൽ വിവരിച്ചിട്ടുള്ള ഭൂമി ഒരു പൊതുക്കാര്യത്തിന് അതായത് കോട്ടയത്ത് പോസ്ററൽ ഡിവിഷന് ഒരു കെട്ടിടം പണിയുവാൻ ആവശ്യമുണ്ടെന്നോ ആവശ്യമുണ്ടാകാനിടയുണ്ടെന്നോ കേരളസർക്കാരിന് തോന്നുന്നതിനാലും;

ഇപ്പോൾ, അതിനാൽ അതിനുള്ള നോട്ടീസ്, ബന്ധപ്പെട്ട എല്ലാപേർക്കും പ്രസ്തുത ആക്ട് 3-ാം വകുപ്പ് (1)-ാം ഉപവകുപ്പിലെ വ്യവസ്ഥകളനുസരിച്ച് ഇതിനാൽ നൽകുന്നു.

33/4955/L.

പട്ടിക

ജില്ല—കോട്ടയം. താലൂക്ക്—കോട്ടയം.

വില്ലേജ്—കോട്ടയം.

(ഏകദേശ വിസ്തീർണ്ണമാണ് കൊടുത്തിരിക്കുന്നത്)

സർവ്വേനമ്പർ	വിവരണം	വിസ്തീർണ്ണം (ആറിൽ)
67/8	പുരയിടം	19.02

ഗവർണ്ണറുടെ ഉത്തരവുപ്രകാരം,

വി. എ. അഗസ്ററിൻ,
ഗവൺമെൻറ് അഡീഷണൽ സെക്രട്ടറി.

വിശദീകരണക്കുറിപ്പ്

(ഇത് വിജ്ഞാപനത്തിൻെറ ഭാഗമല്ല. എന്നാൽ പൊതു ഉദ്ദേശം വെളിപ്പെടുത്തുവാൻ ഉദ്ദേശിച്ചുകൊണ്ടുള്ളതാണ്.)

ഇൻഡ്യൻ പ്രസിഡൻറ് 31-5-1963-ലെ 2-4-63 ജുഡീഷ്യൽ II എന്ന നമ്പർ വിജ്ഞാപനംമൂലം ഈ സംസ്ഥാനത്ത് കേന്ദ്രസർക്കാരിൻെറ ഉപയോഗത്തിനായി ഭൂമി വിലയ്ക്കെടുക്കുന്നതിനുള്ള അധികാരം കേരള സർക്കാരിനെ അവരുടെ സമ്മതത്തോടുകൂടി ഭരമേല്പിച്ചിട്ടുള്ളതും, മുകളിൽ പട്ടികയിൽ പറഞ്ഞിട്ടുള്ള ഭൂമി ഒരു പൊതു ആവശ്യത്തിന്, അതായത് കോട്ടയം പോസ്ററൽ ഡിവിഷന് ഒരു കെട്ടിടം പണിയുവാൻ ആവശ്യമാണെന്ന് കേരള സർക്കാരിന് ബോദ്ധ്യംവന്നിട്ടുള്ളതും ആകുന്നു.

മേൽപറഞ്ഞ ആവശ്യത്തിനുവേണ്ടിയുള്ളതാണ് ഈ വിജ്ഞാപനം.

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GOVERNMENT OF KERALA

Revenue (Legislation) Department

NOTIFICATION

G.O.(Ms) No. 1065/83/RD. *Dated, Trivandrum, 22nd November,* 1983.

S. R. O. No. 1651/83.—In exercise of the powers conferred by section 71 of the Kerala Revenue Recovery Act, 1968 (15 of 1968), the Government of Kerala, being satisfied that it is necessary to do so in public interest, hereby declare that the provisions of the said Act shall be applicable to the recovery of amounts due from any person to the Kerala State Industrial Development Corporation Limited, Trivandrum.

By order of the Governor,

U. Mahabala Rao,
Secretary to Government.

33/4954/MC.

Explanatory Note

(This does not form part of the notification but is intended to bring out the main purport).

The Chairman and Managing Director of the Kerala State Industrial Development Corporation has requested Government to notify them under Section 71 of the Revenue Recovery Act for the recovery of the amounts due to them from various persons, Companies or firms. Government have decided to make the provisions of the Revenue Recovery Act applicable to the Kerala State Industrial Development Corporation, for the recovery of the amounts due to them. Hence the notification.

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 11508/LA4A/83. *Dated, Trivandrum, 22nd November,* 1983.

The Kerala Public Services (Amendment) Bill, 1983 together with the Statement of Objects and Reasons and the Financial Memorandum is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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33/4957/MC.

Seventh Kerala Legislative Assembly

Bill No. 75

THE KERALA PUBLIC SERVICES (AMENDMENT) BILL, 1983

A

BILL

further to amend the Kerala Public Services Act, 1968.

Preamble.—WHEREAS it is expedient further to amend the Kerala Public Services Act, 1968, for the purpose hereinafter appearing;

BE it enacted in the Thirty-fourth Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Kerala Public Services (Amendment) Act, 1983.

(2) It shall be deemed to have come into force on the 1st day of October, 1981.

2. *Insertion of new section* 4.— In the Kerala Public Services Act, 1968 (19 of 1968) (hereinafter referred to as the principal Act), after section 3, the following section shall be inserted, namely:—

"4. *Act and rules thereunder to apply to certain persons notwithstanding anything in the Industrial Disputes Act or any other law.*— Notwithstanding anything contained in Chapter VA or in any other provision of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) or in any other law for the time being in force, or in any judgement, decree or order of any court, the appointment of any person to any public service or post in connection with the affairs of the State of Kerala and the conditions of service (including termination of service) of any person appointed to any such service or post shall be governed by the provisions of this Act and the rules made or deemed to have been made thereunder.".

3. *Repeal and saving.*— (1) The Kerala Public Services (Amendment) Ordinance, 1983 (36 of 1983), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the

principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

A Full Bench of the Kerala High Court, in its judgment dated the 7th October, 1982, in certain Original Petitions filed by provisional or temporary employees working in Government Departments, Government Companies, Statutory Corporations and local bodies has held that the petitioners, excluding those discharging inalienable constitutional functions like administration of justice, are entitled to the benefit of protection of Chapter VA of the Industrial Disputes Act, 1947 and that their services could be terminated, except to give place to permanent hands regularly recruited by the Public Service Commission, only in accordance with the provisions of the said Act. The High Court has also observed that inspite of section 25J of the Industrial Disputes Act, 1947, it may be possible to exclude the operation of the provisions of Chapter VA of that Act by a positive provision in any new legislation.

2. According to the rules now in force in the State, temporary employees are allowed to continue in service only for a period of 180 days and cannot, in the normal course, be re-employed even if the vacancies continue to exist beyond that period. If more than one temporary employee are working in a Department or office, the persons to be discharged as per those rules are those who are appointed first.

3. The application of the Industrial Disputes Act, 1947 to Government servants will cause administrative difficulties to Government. It was, therefore, considered necessary to exclude persons appointed to public services and posts in connection with the affairs of the State from the operation of the Industrial Disputes Act, 1947, by amending the Kerala Public Services Act, 1968. Accordingly, the Kerala Public Services (Amendment) Ordinance, 1983 (5 of 1983). was promulgated by the Governor on the 8th day of February, 1983.

4. A Bill to replace the said Ordinance by an Act of the Legislature could not be introduced in, and passed by the Legislative Assembly of the State during its session which commenced on the 25th day of February, 1983 and ended on the 30th day of March, 1983. In order to keep alive the provisions of the said Ordinance the Kerala Public Services (Amendment) Ordinance, 1983 (16 of 1983), was promulgated by the Governor on the 6th day of April, 1983.

5. A Bill to replace Ordinance 16 of 1983 by an Act of the Legislature could not be introduced in, and passed by the Legislative Assembly during its session which commenced on the 20th day of June, 1983 and ended on the

4th day of August, 1983. In order to keep alive the provisions of Ordinance 16 of 1983, the Kerala Public Services (Amendment) Ordinance, 1983 (36 of 1983) was promulgated by the Governor on the 5th day of October, 1983. The Bill seeks to replace Ordinance 36 of 1983 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

K. KARUNAKARAN.

Government of Kerala
1983

Reg. No. KL/TV(N)/12



KERALA GAZETTE

EXTRAORDINARY

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 11509/LA4/83. *Dated, Trivandrum, 22nd November* 1983.

The Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Bill, 1983 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,

Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1983.

33/4959/MC.

Seventh Kerala Legislative Assembly

Bill No. 76

THE KERALA PRESERVATION OF TREES AND REGULATION OF CULTIVATION IN HILL AREAS BILL, 1983

A

BILL

to provide for the regulation of the cutting and destruction of trees in the State of Kerala and for the regulation of cultivation of land in the hill areas in the State.

Preamble.—WHEREAS there has been indiscriminate felling and destruction of trees in the State of Kerala resulting in considerable soil erosion and destruction and loss of the timber wealth of the State;

AND WHEREAS with a view to prevent soil erosion and destruction and loss of the timber wealth in the State and also to preserve the special characteristics of the hill areas in the State as regards landscape, vegetal cover and climate, it is necessary to regulate the felling and destruction of trees and also the cultivation of land in the hill areas in the State;

BE it enacted in the Thirty-fourth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Act, 1983.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 18th day of June, 1983.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "appellate authority" means an appellate authority appointed under sub-section (2) of section 3;

(b) "authorised officer" means an officer appointed under sub-section (1) of section 3;

(c) "cultivation" means raising of cereals, tubers or plantation crops but shall not include raising of kitchen gardens or flower gardens.

Explanation.—In this clause, "kitchen garden" means an area not exceeding five ares appurtenant to a residence and used for growing vegetables for *bona fide* consumption of the residents therein;

(d) "hill area" means—

(i) any land which has not vested in the Government by virtue of the provisions of sub-section (2) or sub-section (3) of section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971);

(ii) any forest land which has been or may be assigned to any person under the Kerala Government Land Assignment Act, 1960 (30 of 1960) or under the Kerala Land Reforms Act, 1963 (1 of 1964), or under any other law;

(iii) any land used principally for the cultivation of cardamom including lands interspersed within the boundaries of the area principally cultivated with cardamom;

(iv) any land which is an enclave within a reserved forest or within any other forest area.

Explanation.—For the purposes of this clause, the expression "reserved forest" shall have the same meaning as in the Kerala Forest Act, 1961 (4 of 1962);

(e) "new cultivation" means cultivation of land which remained uncultivated for three consecutive years;

(f) "owner", in relation to any land, includes a mortgagee, lessee or other person having right to possession and enjoyment of that land;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "tree" means,—

(i) with reference to any land comprising a hill area, any tree; and

(ii) with reference to any other land, any of the following species of trees, namely:—

Sandalwood (Santalum album), Teak (Tectona grandis), Rosewood (Dalbergia latifolia), Irul (Xylia xylocarpa), Venthekku (Lagerstroemia lanceolata), Thempavu (Terminalia tomantosa), Mulluvenga (Bridelia retusa), Kampakam (Hopea parviflora), Venga (Pterocarpus marcupium), Chempakam (Michelia chempaca), Chadachi (Grewia tiliaefolia), Chandana vempu (Cedrela toona), Cheeni (Tetrameles nudiflora), Jathi (Myristica fragrans), Njavel (Eugenia jambolana) and Thanni (Terminalia bellerica).

3. *Authorised officers and appellate authorities.*—(1) The Government may by notification in the Gazette, appoint such officers as they think fit to be authorised officers for the purposes of this Act and may assign to them, such local limits as the Government think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act, and may assign them such local limits as the Government think fit.

4. *Restriction regarding cutting, etc., of trees.*—(1) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree.

(2) The permission under sub-section (1) shall not be refused if—

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen:

Provided that where permission to cut a tree is granted on the ground specified in clause (a) or clause (b), the authorised officer shall impose as a condition for the grant of such permission the effective regeneration of an equal number of the same or other suitable species of trees; or

(c) such cutting is to enable the owner of the land in which the tree stands to use the area cleared or the timber cut for the construction of a building for his own use.

(3) No person shall cut or otherwise damage, or cause to be cut or otherwise damaged, the branch of any tree:

Provided that the provisions of this sub-section shall not be deemed to prevent the pruning of any tree as required by ordinary agricultural or horticultural practices.

(4) No person shall, without the previous permission in writing of the authorised officer, destroy any plant of any tree or do any act which diminishes the value of any such plant.

(5) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in any land referred to in sub-clause (ii) of clause (d) of section 2,—

(a) which has been or may be planted by the assignee of that land, other than a tree specified in sub-clause (ii) of clause (h) of the said section;

(b) the value of which has been paid by the assignee to the Government, other than a tree specified in sub-clause (ii) of the said clause (h).

(6) Nothing contained in sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) shall apply in respect of any tree or plant in the compound of any residential building in any area other than a hill area:

Provided that where such compound exceeds 0.8 hectare in extent, the provisions of this sub-section shall apply only in respect of an extent of 0.8 hectare immediately surrounding the residential building.

5. *Prohibition of cutting of trees in notified areas.*—(1) Notwithstanding anything contained in any law for the time being in force, or in any judgement, decree or order of any court, tribunal or other authority, or in any agreement or other arrangement, the Government may, with a view to preserving the tree growth in private forests or in the Cardamom Hills Reserve or in any other areas cultivated with cardamom, by notification in the Gazette, direct that no tree standing in any such area specified in the notification shall be cut, uprooted or burnt except on the ground that—

(a) the tree constitutes a danger to life or property; or

(b) the tree is dead, diseased or windfallen.

(2) No person shall, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree in any area specified in the notification under sub-section (1) on any of the grounds specified therein.

Explanation.—For the purposes of this sub-section, the expression "private forest" means any land which immediately before the 10th day of May, 1971, was a private forest as defined in the Kerala Private Forests (Vesting and Assignment) Act, 1971.

6. *Prohibition of cultivation.*—(1) No person shall use or cause to be used any land comprising a hill area with a slope of more than one in three for any purpose other than the growing of trees:

Provided that if any such land was under cultivation at the commencement of this Act, the authorised officer may, by order in writing, permit the continuance of the cultivation of such land with the same crops with which it was being cultivated at such commencement, subject to such conditions as he may impose including conditions relating to soil conservation measures and planting of trees thereon.

Explanation.—For the purposes of this sub-section, the term "trees" shall include any species of trees.

(2) No person shall use or cause to be used any land comprising a hill area with a slope of not more than one in three for new cultivation except with the previous permission in writing of the authorised officer who may, while granting such permission, impose such conditions as he may deem fit, including conditions relating to soil conservation measures.

(3) No person shall, after the expiry of one year from the date of the commencement of this Act, use or cause to be used for cultivation any land comprising a hill area with a slope of less than one in three except with the previous permission in writing of the authorised officer who may, while granting such permission, impose such conditions as he may deem fit, including conditions relating to soil conservation measures.

(4) Nothing contained in sub-section (2) or sub-section (3) shall apply to any land with a slope of less than one in ten.

7. *Application for permission.*—(1) Every application for permission under section 4 or section 5 or section 6 shall be in such form and shall contain such particulars as may be prescribed and shall be made to the authorised officer.

(2) The procedure to be followed by the authorised officer in granting or refusing permission under section 4 or section 5 or section 6 shall be such as may be prescribed.

8. *Appeal.*—(1) Any person aggrieved by an order refusing to grant permission under section 4 or section 5 or section 6 may, within ninety days of the receipt of such order, prefer an appeal to the appellate authority:

Provided that the appellate authority may admit an appeal preferred after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) An appeal under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed.

(3) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, pass such order thereon as it thinks fit.

9. *Revision.*—(1) The Government may, either *suo motu* or on application by any person aggrieved by an order of the appellate authority under section 8, call for and examine the record of any order passed by the appellate authority for the purpose of satisfying themselves as to the legality, propriety or regularity of such order and pass such order thereon as they think fit.

(2) The Government shall not of their own motion revise any order under sub-section (1) if that order has been passed more than three months previously.

(3) An application under sub-section (1) by an aggrieved person shall be made within a period of sixty days from the date on which the order of the appellate authority was communicated to him:

Provided that the Government may admit an application made after the expiry of the said period of sixty days, if they are satisfied that the applicant had sufficient cause for not making the application within that period.

(4) An order prejudicial to a person shall not be passed under sub-section (1) unless that person has been given a reasonable opportunity of showing cause against such order.

Explanation.—An order declining to interfere shall, for the purposes of this sub-section, be deemed to be an order prejudicial to a person.

10. *Penalties.*—Whoever contravenes any of the provisions of section 4 or sub-section (2) of section 5 or section 6 or a direction contained in a notification under sub-section (1) of section 5 or any of the terms and conditions subject to which a permission has been granted under this Act shall be punishable,—

(a) in the case of first offence, with impriosnment for a term which shall not be less than six months but which may extend to two years, and with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees; and

(b) in the case of a second or subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years, and with fine which shall not be less than one thousand rupees but which may extend to five thousand rupees.

11. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm, society or other association of individuals; and

(b) "director",—

(i) in relation to a firm, means a partner in the firm;

(ii) in relation to a society or other association of individuals' means the person who is entrusted under the rules of the society or other association, with the management of the affairs of the society or other association, as the case may be.

12. *Powers of authorised officers and appellate authorities.*—Every authorised officer and appellate authority shall, for the purpose of performing his or its functions under this Act, have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) such other matters as may be prescribed.

13. *Powers of entry and inspection.*—The authorised officer or any other officer generally or specially authorised by the Government in this behalf may, with such assistants, if any, being persons in the service of the Government, as he thinks fit, at all reasonable times enter upon any land for the purpose of ascertaining whether any of the provisions of this Act or any of the terms and conditions subject to which any permission has been granted under this Act has been contravened.

14. *Power to seize timber and other articles involved in commission of offence.*—(1) Where any officer of the Forest Department not below the rank of Forester or any Police Officer not below the rank of Sub-Inspector has reason to believe that any tree has been cut in contravention of section 4 or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, he may seize the timber of such tree together with all tools, ropes, chains and other articles used in the commission of such offence and all boats, vehicles and cattle used for carrying such timber.

Explanation.—The terms "boat" and "vehicle" in this section, section 15 and section 16 shall include all the articles and machinery kept in the boat or vehicle, as the case may be, whether fixed to the same or not.

(2) Every officer seizing any timber under sub-section (1) shall place on such timber a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure to the authorised officer.

(3) On receipt of a report under sub-section (2), the authorised office shall,—

(a) if he is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4 or sub-section (2)of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of such seizure to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if he is not so satisfied, make a report of such seizure to such authority as may be prescribed.

(4) The authority to which a report is made under clause (b) of sub-section (3) shall,—

(a) if it is satisfied that the timber mentioned in such report is of any tree cut in contravention of section 4, or sub-section (2) of section 5 or a direction contained in a notification under sub-section (1) of section 5, make a report of the seizure of such timber to the Judicial Magistrate of the First Class having jurisdiction over the area in which such seizure has been made;

(b) if it is not so satisfied, order that such timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized along with it shall be returned to the person from whom they were seized.

15. *Power to release property seized under section* 14.—The authorised officer may release any timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized under section 14 and in respect of which a report has been made to the Judicial Magistrate of the First Class under clause(a) of sub-section (3) or clause (a) of sub-section (4) of that section, on the execution by the owner thereof of a bond for the production of the property so released, if and when so required, before such Magistrate.

16. *Procedure by Magistrate.*—Upon the receipt of a report under clause (a) of sub-section (3) or clause (a) of sub-section (4) of section 14, the Magistrate shall take such measures as may be necessary for the trial of the accused and the disposal of the timber and any tool, rope, chain or other article or any boat, vehicle or cattle seized along with it, according to law.

17. *Procedure as to perishable property seized under section* 14.—(1) Notwithstanding anything hereinbefore contained,—

(a) the Magistrate to whom a report is made under section 14 may direct the sale of any property seized under that section, which is subject to speedy and natural decay; and

(b) if, in the opinion of the authorised officer, it is not possible to obtain the orders of the Magistrate under clause (a) in time, such officer may sell the property himself, remit the sale proceeds into the nearest Government

Treasury and make a report of such seizure, sale and remittance to the Magistrate referred to in the said clause, and thereupon such Magistrate shall take such measures as may be necessary for the trial of the accused.

(2) The Magistrate may deal with the proceeds of the sale of any property sold under clause (a) or clause (b) of sub-section (1) in the same manner as he might have dealt with the property if it had not been sold.

18. *Saving of power to release property seized.*—Nothing hereinbefore contained shall be deemed to prevent the authorised officer from directing at any time the immediate release of any property seized under section 14 and the withdrawal of any charge made in respect of such property:

Provided that the powers under this section shall be exercised by the authorised officer only for good and sufficient reasons to be recorded in writing and with the previous approval in writing of the Chief Conservator of Forests.

19. *Institution of prosecution.*—No prosecution shall be instituted against any person without the sanction of the authorised officer.

20. *Cognizance of offences.*—No court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Act.

21. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by any officer or authority or the Government.

22. *Indemnity.*—No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority or any other person for anything which is in good faith done or purporting to have been done under this Act or any rule or order made thereunder.

23. *Restriction regarding cutting, etc., of trees in future assignments.*—Notwithstanding anything contained in any law for the time being in force, any assignment after the commencement of this Act of land belonging to the Government, under any law for the time being in force shall be subject to the condition that the assignee shall not, without the previous permission in writing of the authorised officer, cut, uproot or burn, or cause to be cut, uprooted or burnt, any tree standing on such land at the time of such assignment, and the provisions of this Act shall apply in relation to such permission as if they apply in relation to a permission under section 4.

24. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the girth of trees which may be permitted to be cut;

(b) the terms and conditions subject to which permission may be granted;

(c) the procedure to be followed by the authorised officer before granting or refusing permission;

(d) the procedure to be followed by the appellate authority in the disposal of an appeal under section 8;

(e) any other matter which has to be, or may be, prescribed.

25. *Laying of notifications and rules before Legislative Assembly.*—Every notification issued under sub-section (1) of section 5 and every rule made under section 24 shall be laid, as soon as may be after it is issued or made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the notification or rule or decides that the notification or rule should not be issued or made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

26. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with such provisions, which may appear to them to be necessary for removing the difficulty.

27. *Repeal and saving.*—(1) The Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 (7 of 1974), and the Kerala Preservation of Trees and Regulation of Cultivation in Hill Area Ordinance, 1983 (29 of 1983) are hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance, anything done or deemed to have been done or any action taken or deemed to have been taken under the said Ordinance shall be deemed to have been done or taken under this Act:

Provided that nothing contained in this section shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him after the cesser of operation of the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (21 of 1983) and before the date of publication of the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (29 of 1983) in the Gazette.

STATEMENT OF OBJECTS AND REASONS

Indiscriminate felling and destruction of trees in the State have been brought to the notice of Government and it is feared that it may result in quick denudation of the forest growth and consequent soil erosion, land slides, flood etc. This is also detrimental to ecological balance. Of late, felling of trees and destruction of flora and fauna are reported to be on the increase. As there was no effective law to prevent this tendency, it was proposed to enact a law for imposing restrictions on the cutting of trees in the State and regulating cultivation in the hill areas of the State. As the Legislative Assembly was not in session and as the matter was of an urgent nature, the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (21 of 1983) was promulgated by the Governor on the 17th day of June, 1983.

2. A Bill to replace the said Ordinance by an Act of the Legislature though published in the Gazette, could not be introduced in, and passed by, the Legislative Assembly during its session which commenced on the 20th day of June, 1983 and ended on the 4th day of August, 1983 and therefore the Ordinance ceased to operate on the 1st day of August, 1983. In order to keep alive the provisions of the said Ordinance the Kerala Preservation of Trees and Regulation of Cultivation in Hill Areas Ordinance, 1983 (29 of 1983) was promulgated by the Governor on the 29th day of August, 1983.

3. The Bill seeks to replace Ordinance 29 of 1983 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to provide for the appointment of authorised officers and appellate authorities. The legislation is intended to ensure preservation of trees and to regulate cultivation in the hill areas. It is necessary to engage sufficient field staff and ministerial staff for the effective implementation of the legislation. It is proposed to appoint the following additional staff for the purpose:—

1.	Deputy Conservator of Forests	1
2.	Assistant Conservator of Forests	8
3.	Senior Superintendent	1
4.	Range Officers	58
5.	Junior Superintendent	8
6.	Foresters	174
7.	Confidential Asst. Gr. II	1
8.	L. D. Clerk	161
9.	L. D. Typist	9
10.	Driver Gr. II	8
11.	Peons	132

2. The annual expenditure towards the additional staff is estimated at Rs. 54 lakhs approximately.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 3 seeks to empower the Government to appoint, by notification in the Gazette, authorised officers for the purposes of the Act.

Sub-clause (2) of clause 3 seeks to authorise the Government to appoint, by notification in the Gazette, appellate authorities for the purposes of the Act.

Under sub-clause (1) of clause 5, Government may, by notification in the Gazette, direct that no tree standing in private forests or in Cardamom Hills or in any area cultivated with cardamom shall be cut, uprooted or burnt except on the grounds specified in that sub-section.

Clause 7 seeks to empower the Government to prescribe the form of, and the particulars to be contained in, an application for permission under sections 4, 5 or 6 and the procedure to be followed by the authorised officer in granting or refusing such permission.

Clause 8 seeks to empower the Government to prescribe the form of appeal under that clause and the particulars to be contained in such appeal.

Under clause 12 the Government may prescribed matters, other than those specified in that clause, in respect of which the authorised officer and the appellate authority shall have powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, for the purpose of performing his or its functions under the Act.

Under clause 13, the Government may generally or specially authorise any officer to exercise the powers of entry and inspection provided for in that clause.

Under sub-clause 3 (b) of clause 14, the Government may prescribe the authority to which the authorised officer shall make a report when he is not satisfied that the timber seized by a Forest Officer is cut in contravention of section 4, or sub-section (2) of section 5 or a direction under sub-section (1) of section 5.

Clause 24 seeks to confer power on the Government to make rules to carry out the purposes of the Act. The matters in respect of which rules may be made relate *inter alia* to the girth of trees which may be permitted to be cut, the terms and conditions subject to which permission may be granted, the procedure to be followed by the authorised officer before granting or refusing permission and the procedure to be followed by the appellate authority in the disposal of an appeal under section 8.

Clause 26 seeks to empower the Government to make orders not inconsistent with the provisions of the Act for removing difficulties in giving effect to the provisions of the Act.

The matters in respect of which notifications may be issued or rules or orders may be made are matters of administrative nature or matters of detail. Besides, the notification to be issued under sub-section (1) of section 5 and the rules to be made under the Act will be subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is therefore of a normal character.

K. P. NOORUDDIN.